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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 373

FRED STROBLE, PETITIONER,

PEOPLE OF THE STATE OF CALIFORNIA

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF CALIFORNIA**

PETITION FOR CERTIORARI FILED MAY 14, 1951.

CERTIORARI GRANTED OCTOBER 8, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 373

FRED STROBLE, PETITIONER,

vs.

PEOPLE OF THE STATE OF CALIFORNIA

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OF CALIFORNIA

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[fol. 1]

**IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE COUNTY OF LOS
ANGELES**

S. C. No. 130013

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff

v.

FRED STROBLE, Defendant

INFORMATION—Filed November 22, 1949

The said Fred Stroble, is accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of Murder, A felony, committed as follows: That the said Fred Stroble on or about the 14th day of November, 1949, at and in the County of Los Angeles, State of California, did willfully, unlawfully and feloniously and with malice aforethought murder one Linda Joyce Glueft, a human being.

W. E. Simpson, District Attorney, for the County of Los Angeles, State of California, By A. Alexander, Deputy.

[fols. 2-36]. [File endorsement omitted]

[fol. 37] IN SUPERIOR COURT OF CALIFORNIA, COUNTY OF
LOS ANGELES

INSTRUCTIONS GIVEN

The law of this state admonishes you to view with caution the testimony of any witness which purports to relate an oral admission of the defendant or an oral confession by him.

Given, Fricke, Judge.

DEFINITIONS OF CONFESSION AND ADMISSION

(As revised)

Evidence has been received in this case tending to show that on (occasions) other than this trial the defendant himself made (statements) tending to prove his guilt of the alleged crime for which he is on trial.

(A statement thus made by a defendant may be either a confession or an admission.)

A confession is a statement that was made by one who is a defendant in a criminal trial, at a time when he was not testifying in that trial, by which he acknowledged certain conduct of his own that constituted a crime for which he is on trial, a statement which, if true, discloses his guilt of that crime and excludes the possibility of a reasonable inference to the contrary.

If under my instructions you find that a voluntary confession was made, you are the exclusive judges as to whether or not the confession was true; and in deciding that question you should consider all the circumstances connected with the making of the statement, as shown by the evidence. If you should find that a confession was false in any particular, it remains nevertheless evidence for your consideration in connection with all other evidence in the case, to be given such significance and weight as your judgment may determine.

Given, Fricke, Judge.

INSTRUCTION REQUESTED BY DEFENDANT

(An admission is something less than a confession in that it does not concede so much pointing toward defendant's guilt, and does not alone, even if true, support a deduction of guilt. It may consist of any statement or other conduct by a defendant whereby he expressly or impliedly acknowledges a fact that contributes in some [fol. 39] degree to the proof of his guilt of an alleged crime for which he is on trial, and which statement was made or conduct occurred outside of that trial.)

Given, Fricke, Judge.

The law absolutely forbids you to consider a confession in determining the innocence or guilt of a defendant unless

the confession was voluntarily made, and although the court has admitted evidence tending to show that defendant made a confession, you must disregard the asserted confession entirely unless you, yourselves, by your own weighing of all the evidence, your own judging of the credibility of witnesses, and your own reasonable deductions, conclude that the alleged confession not only was made, but was voluntary.

(This rule does not apply to an admission, if any, by the defendant which did not amount to a confession, and you may consider, for whatever value you attach to it, evidence of any such admission whether voluntarily or in- [fol. 40] voluntarily made.)

Given, Fricke, Judge.

A confession is not voluntary when it has been obtained by any kind or degree of violence, abuse or threat, or by any direct or implied promise of immunity, leniency or other benefit, or by any coaxing, cajoling, or menacing influence which induces in the mind of the defendant the belief or hope that he will gain some advantage by making a confession, provided that any such inducement by which the confession is obtained originates either from a law enforcement officer or in the presence of such an officer, under circumstances from which the accused might reasonably be expected to assume that the inducement is authorized by the officer.

(The mere fact that a confession is made under the belief or hope that the accused will gain some advantage by it does not, in and of itself, make the confession involuntary, because such a belief or hope may originate independently in the mind of the defendant or may be suggested or induced by his own counsel or a relative or friend or by some other means not involving the participation of a law enforcement officer.)

(If a confession is made when the accused is under arrest and is being detained, or when he is not represented by counsel, or when he has not been told that any statement he might make will or may be used against him,* [or when he has been truthfully informed that another

* Struck out in copy.

person has made a confession or a statement implicating the accused, such a circumstance, in and of itself, does not] (such circumstances, in and of themselves, do not) make the confession involuntary, but all the facts connected with the making of a confession, if one was made, including any such as I have mentioned, ought to be considered by you in determining whether or not the confession was voluntary.)

Fricke, Judge.

[fols. 1-13] IN SUPERIOR COURT OF CALIFORNIA, COUNTY OF
LOS ANGELES

[Title omitted]

Reporter's Transcript

[fol. 14] SYLVIA HAUSMAN, called as a witness on behalf of the People, being first duly sworn, was examined and testified as follows:

The Clerk: What is your name?

The Witness: Sylvia Hausman.

Direct examination.

By Mr. Alexander:

Q. Will you try to keep your voice up, please?

A. Yes, I will.

Q. Mrs. Hausman, on the 14th of November, 1949, where [fol. 15] were you living?

A. At 2003 South Crescent Heights Boulevard.

Q. Who was living with you at that house on that day?

A. My husband and my two children and myself.

Q. Your husband is Ruben Hausman?

A. That is right.

Q. One child is Freddy; is that right?

A. Yes.

Q. How old is Freddy?

A. He is 12.

Q. The other child, her name is what?

A. Rochelle.

Q. Also known as Chelle?

A. Chelle.

Q. And how old is Chelle?

A. Chelle is 6.

Q. Directing your attention to the defendant Fred Stroble, do you recognize him?

A. He is my father.

Q. Was he at your house on the 14th of November of 1949?

A. Yes.

Q. On that day, Mrs. Hausman, did you have occasion to leave the house?

A. Yes, I did.

Q. Did you leave alone or with some one else?

[fol. 16] A. I left with my daughter Rochelle.

Q. Where were you going to?

A. To a youngster's party.

Q. When you left the house, did you leave any one behind?

A. My father was there.

Q. The defendant in this case?

A. Yes.

Q. Now, before you left the house, did you give him any instructions concerning some food?

A. Yes.

Q. Briefly, what were they?

A. Well, I asked him to put some potatoes on when I phoned.

Q. You told him that you would phone him when to put the potatoes on?

A. That is right.

Q. Do you recall about what time it was when you left that house?

A. I don't remember now.

Q. Would you say, well, let's see, Chelle came home from school that day at what time?

A. Well, she leaves school at 2:00 and she is usually home about 2:20, something like that.

Q. Was Chelle home for some time before you left the house with her?

A. Well, I was dressing her and getting her ready for [fol. 17] the party and wrapping the gift.

Q. Would you say that it was some time between 3:00 and 3:30 when you left the house?

A. Somewhere between that time.

Q. Now, Mrs. Hausman, directing your attention to that diagram behind you, do you notice that one room, the lower front bedroom, the one in the lower right-hand corner?

A. Yes.

Q. Whose bedroom is that?

A. That is the bedroom that my children slept in.

Q. How many beds were there in that room that day?

A. Two single beds.

Q. I take it Chelle slept in one and Freddy in the other?

A. That is right.

Q. Now, as you entered that room, one bed appeared on the left about where my finger is now (indicating)?

A. Yes.

Q. Whose bed was that?

A. That was Rochelle's.

Mr. Alexander: May I draw this small rectangle in?

The Court: Yes, if you will, Mr. Alexander.

Mr. Alexander: And we will mark this—Rochelle's; we will call that—

The Court: Why not put the word "Rochelle" right in there; it is easier to remember.

[fol. 18] Mr. Alexander: Yes. (Indicating.)

Q. Now, on the right-hand side was another bed; is that right?

A. That was Freddy's bed.

Q. That was Freddy's bed?

A. Yes.

Q. Well, I know that is not to scale, but—

Mr. Hill: You said on the right side.

Mr. Alexander: As you come through the door in the bedroom.

Mr. Hill: May we indicate that that is the southeast corner of that front bedroom?

The Court: In view of the fact that he put the name on each bed there won't be any difficulty.

Mr. Hill: All right.

By Mr. Alexander:

Q. Now, was there also a dresser in that room?

A. Yes, there were two of them.

Q. And approximately where were they located?

A. There (indicating), there were two of them.

Q. Two together?

A. Yes.

Q. Coming down this way?

A. No, they were between the closet and the door.

[fol. 19] Mr. Hill: Well, these two dressers we will mark "Dr." and "Dr."

The Court: Well, they are two rough squares directly to the right or east of the partition there.

By Mr. Alexander:

Q. I show you a photograph, Mrs. Hausman, and ask you if you recognize the room and the bed depicted on that photograph.

A. Yes.

Q. What room is that and what beds are those?

A. That is my children's bedroom and their beds.

Mr. Alexander: May this photograph be marked People's 2?

The Court: People's 2 for identification.

By Mr. Alexander:

Q. Now, as you look at the photograph the bed on the right is Freddy's, is that right?

A. That is right.

Q. And the bed on the left is Rochelle's?

A. That is right.

Q. And you notice in the lower right-hand corner just a bare segment there that appears to be the corner of the dresser?

A. That is the dresser, yes.

Q. Now, connected with that dresser was there a tie rack?

A. Yes, there was.

Q. And on that tie rack when you left the house on the [fol. 20] 14th of November were there ties?

A. There were some ties and some belts.

Q. On Freddy's bed, at the foot of the bed, was there a blanket?

A. That is it (indicating).

Q. I show you what appears to be a blanket and ask you if this is the blanket that was on Freddy's bed when you left the house.

A. Yes.

Mr. Alexander: May the blanket be marked 3?

The Court: 3 for identification.

By Mr. Alexander:

Q. Now, Mrs. Hausman, sometime before the 14th of November, 1949, had you bought some ties for Freddy; is that right?

A. Yes.

Q. I show you what appears to be a knitted tie and ask you do you recognize that tie.

A. Freddy had a knitted tie like that.

Mr. Hill: I didn't get the answer.

A. My son had a tie that was knitted like that.

By Mr. Alexander:

Q. Can you recognize any difference between the tie that Freddy had and this tie that I am showing you now, outside of the condition of it of course?

A. I don't know.

Q. Does it look like the tie Freddy had?

A. Yes, it does.

[fol. 21] Mr. Alexander: May this be marked People's

The Court: People's 4 for identification.

By Mr. Alexander:

Q. Mrs. Hausman, you knew Linda Joyce Glucoft in her lifetime, did you not?

A. Yes.

Q. How long were you living at 2003 South Crescent Heights?

A. Approximately two years.

Q. And did you know Linda Joyce during that two years?

A. Yes.

Q. Do you know whether or not Linda and your daughter Chella were friendly?

A. Oh, yes.

Q. And about how frequently would they see each other, do you know?

A. Every day.

Q. They were little playmates, is that right?

A. That is right.

Q. Mrs. Hausman, I show you a photograph and ask you, do you recognize this as being a photograph of Linda Joyce in her lifetime?

A. Yes.

Q. Did you say yes?

A. Yes.

Mr. Alexander: May this photograph be marked People's—

The Court: 5 for identification.

[fol. 22] By Mr. Alexander:

Q. You did not see Linda Joyce on the 14th of November, 1949, did you?

A. I don't recall having seen her that day.

Q. Now, Mrs. Hausman, in the kitchen of your home did you have a place where you usually kept knives?

A. Yes.

Q. Where was that?

A. Well, I had a knife rack that was on the wall, and I also had a drawer that I kept a few knives in.

Mr. Henderson: Your Honor, if the reporter got that answer, I wonder if he could read it for us.

The Court: Yes. I didn't get it all myself.

(Answer read by the reporter.)

By Mr. Alexander:

Q. I show you what appears to be a black-handled kitchen knife and ask you, do you recognize that knife, Mrs. Hausman?

A. Yes.

Mr. Alexander: May this knife be marked People's 6, your Honor?

The Court: So marked.

By Mr. Alexander:

Q. Was that a knife that was in your kitchen when you left your home on the 14th of November, 1949?

A. I presume it was there. It is a knife that ordinarily was in my kitchen.

Q. I show you what appears to be an ice pick, Mrs. [fol. 23] Hausman; do you recognize that ice pick?

A. Well, I am not too familiar with it. It is something that I wouldn't have had occasion to use for years and years, but it may have been in my kitchen.

Q. Does it look like an ice pick that may have been in your kitchen?

A. Yes.

Mr. Alexander: May this pick be marked People's—

The Court: 7.

Mr. Alexander: —7.

By Mr. Alexander:

Q. Now, Mrs. Hausman, in the kitchen did you also have a hammer?

A. Yes, I kept several of them in the kitchen.

Q. I show you what appears to be a ball peen hammer and ask you, do you recognize this as a hammer that you customarily kept in your kitchen?

A. Yes.

Mr. Alexander: May this be marked 8.

The Court: 8 for identification.

By Mr. Alexander:

Q. And where in the kitchen did you customarily keep that?

A. In a drawer.

Q. By the way, the address you gave us, that is a place in the County of Los Angeles, is it not?

A. Yes.

Q. Mrs. Hausman, while you were at this party on [fol. 24] the 14th of November, did you telephone your house?

A. Yes, I did.

Q. About what time did you telephone your house?

A. I don't recall the exact time, but I called more than once.

Q. Would you say it was some time after 4:30 that you called?

A. Possibly.

Q. And how many times do you think you called?

A. Well, I know that I called at least twice.

Q. And over what period of time do you think those calls took?

A. Well, perhaps there was ten minutes between them.

Q. Did you receive any answer to your call?

A. No, I didn't.

Q. Can you place for us more closely, please, the time you made your first call?

A. I am very sorry, I can't remember the exact time.

The Court: Just your best judgment, if you can't fix the exact time.

The Witness: It must have been between, oh,—4:30, something like that.

Q. About 4:30 or so, more or less?

A. That is right.

Q. Now, Mrs. Hausman, I show you an axe and ask you, do you recognize that axe?

[fol. 25] A. I had an axe that looked like that.

Q. And where was the axe that you had, customarily kept?

A. In the garage.

Mr. Alexander: May this be marked—

The Court: 9.

By Mr. Alexander:

Q. Mrs. Hausman, about what time was it that you returned home from the party?

A. It was somewhere around six o'clock.

Q. In the evening of the 14th?

A. Yes.

Q. When you returned home, was the defendant at home?

A. No, he wasn't.

Q. From the time you left your house about between 3:00 and 3:30 of November 14, 1949, up to the present time, you have not seen this defendant, have you?

A. Yes, I have.

Q. Well, has he been back to the house?

A. No.

Q. Mrs. Hausman, when you returned home did you notice some people in the neighborhood of your home?

A. Yes.

Q. Who was there?

A. Well, I don't remember if it was Mrs. Simon or Mrs. Glucoft.

Q. Did you then join in the search for Linda Joyce?

[fol. 26] A. I looked around the neighborhood, and my son looked.

Q. By the way, when you left to go to the party you left in a Yellow Cab, did you not?

A. Yes, I did.

Q. And you phoned for that cab?

A. Yes, I did.

Q. Mrs. Hausman, before you left to go to that party did you have any conversation with the defendant?

A. I don't remember now.

Q. Did you see him?

A. Yes, I saw him. I must have spoken to him. I remember telling him about the potatoes, about the dinner.

Q. And did he make any reply to you?

A. I don't remember now.

Q. Had this defendant slept at your home the night of the 13th?

A. Yes.

Q. How long was he there before the 14th of November?

A. I don't remember now. It was a few days.

Q. The 14th was on a Monday, was it not?

A. I really don't remember.

Mr. Henderson: Will you take judicial notice of that fact, your Honor?

The Court: Yes.

By Mr. Alexander:

Q. Now, bearing in mind that the 14th of November [fol. 27] was a Monday, can you now tell us when he came to your home?

A. I don't remember exactly. It was a few days previous, three or four. I don't remember.

Q. While you were living at 2003 did the defendant live with you?

A. No, he didn't live with me.

Q. Did he visit you often?

A. Well, he used to.

Q. And when he came to visit you did he stay over any period of time?

A. A couple of days.

Q. Did you know whether or not this defendant knew Linda Joyce?

A. Well, of course he knew her.

Q. You saw them together on occasions?

A. Surely.

Q. When you returned home at six o'clock or thereabouts, Mrs. Hausman, did you notice whether or not—withdraw that, please.

Now, when your father, this defendant, came to your home a few days before the 14th of November did he bring any clothes with him?

A. Would you repeat that question again?

Q. When your father came to your home this last time, before the 14th of November, did he bring any clothes with [fols. 28-29] him?

A. Yes; one day he brought a suitcase, and I presume that it contained clothing.

Q. When you returned home on the night of the 14th was that suitcase there?

A. I don't remember.

Q. Have you seen it since?

A. I don't recall having seen it.

Q. Did you notice whether any of your father's clothes were missing from the house when you returned home?

A. No, I did not.

Q. Do you know now whether any of his clothes are missing from the house?

Mr. Hill: I object to that as assuming something not in evidence, that she ever saw any of his clothes in the house.

The Court: Well, I presume that he had them there.

By Mr. Alexander:

Q. Did he have some clothes in the house?

A. Yes, he had clothing there.

The Court: Objection overruled.

By Mr. Alexander:

Q. After you came back from that party were the clothes he had still there?

A. Yes, there was clothing there.

Mr. Hill: May I have the last answer?

A. There was clothing there.

[fol. 30] LILLIAN GLUCOFF, called as a witness on behalf of the People, being first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Lillian Glucoft.

Direct examination.

By Mr. Henderson:

Q. Where do you live, Mrs. Glucoft?

A. 1968 South Crescent Heights.

Q. How long have you lived at that address?

A. About eight years.

Q. Do you know Mr. and Mrs. Hausman?

A. Yes.

Q. At one time did they live close to your place?

A. Yes, across the street.

Q. About how long did you know the Hausmans?

A. Well, let me see, around two years.

Q. Were there any children in the Hausman family?

A. Yes, two.

Q. Do you know their names?

A. Freddy and Rochelle.

Q. Do you know the age of Freddy?

A. About 12.

Q. And about how old is Rochelle?

A. 6.

Q. During the time that you knew the Hausmans, Mrs. [fol. 31] Glueck, did you have any children?

A. Yes.

Q. How many?

A. Two.

Q. What were their names, please?

A. Richard and Linda.

Q. How old was Richard?

A. 8.

Q. And was Linda's middle name Joyee?

A. Yes.

Q. How old was Linda?

~~A. Six.~~

Q. I beg your pardon?

A. Six.

Q. Did your daughter Linda know Rochelle Hausman?

A. Yes, she was her best friend.

Q. About how long did these two little girls know each other?

A. About two years.

Q. Were they playmates?

A. Yes, always.

Q. Do you have any idea of how many times a week they would see each other?

A. Practically every day.

Q. Is your daughter Linda dead or alive?

A. Dead.

[fol. 32] Q. When did she die, do you know?

A. November 14th.

Q. Of last year?

A. Yes, sir.

Q. When did you last see Linda alive, Mrs. Glucoft?

A. That same day.

Q. In the morning or in the afternoon?

A. In the afternoon.

Q. That was the afternoon of Monday the 14th of November of last year; is that right?

A. Yes.

Q. Do you have any idea what time it was in the afternoon?

A. Yes, about a quarter to 4:00.

Q. Where was Linda at that time?

A. She went to play with Rochelle.

Q. When you saw your daughter on that occasion, did your daughter tell you where she was going?

A. Yes.

Q. What did she say?

A. "I am going to play with Rochelle."

Q. And that was the last that you saw of her; is that right?

A. Yes.

Q. Do you know if little Linda had any panties on when she left that afternoon?

[fols. 33-54] A. Yes, she did.

Q. Do you remember anything about their color or anything like that?

Mr. Hill: I will enter into a stipulation that the proposed exhibit that you have before you were the panties worn by Linda Joyce on that day.

Mr. Henderson: We will accept that stipulation.

Your Honor, may the panties be marked for identification?

The Court: They will be marked Exhibit 10 for identification.

By Mr. Henderson:

Q. What time was it Linda's habit to return home after she had been out playing in the afternoon, Mrs. Glucoft?

A. About 5:00 at the latest.

Q. And when she did not come home, I suppose you got worried about her?

A. Yes, I started calling her and going to everybody's home.

Q. Did you call the police officers?

A. When it reached 5:30 and it was getting dark, I called them because she never left the street.

Q. Later the next morning you found out from the officers that the body had been found?

A. Yes.

Mr. Henderson: You may cross-examine.

Mr. Matthews: No cross-examination.

[fol. 55] W. H. BRENNAN, having been first duly sworn as a witness on behalf of The People, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: W. H. Brennan.

Direct examination.

By Mr. Alexander:

Q. Mr. Brennan, what is your occupation, please?

A. I am a police officer of the City of Los Angeles.

Q. Attached to which division?

A. The Wilshire Detective Bureau.

Q. And your rank is what?

A. Sergeant.

Q. Are you one of the detectives in charge of the investigation in this case?

A. Yes, sir.

Q. On the morning of the 15th of November, 1949, were you called to the premises at 2003 South Crescent Heights Boulevard?

[fol. 56] A. Yes, sir.

Q. About what time did you arrive?

A. Approximately ten minutes to seven a. m.

Q. Mr. Brennan, after you arrived there was your at-

tention directed to the vicinity of an incinerator on the westerly side of those premises?

A. Yes, it was.

Q. What did you see?

A. I saw near the incinerator—behind the incinerator I saw a body wrapped in a blanket covered over with several paper boxes and also some wooden boxes.

Q. Now, after you saw that did you make any examination of the premises?

A. I did.

Q. Now, Mr. Brennan, I will show you an axe which has been marked People's Exhibit 9 for identification, and ask you whether you recognize this axe?

A. Yes.

Q. Where was that axe when you first saw it?

A. The axe was standing at the north side of the incinerator, standing upright.

Q. Did you then make a further examination of those premises?

A. I did.

Q. Directing your attention to a knife which has been marked People's Exhibit 6, do you recognize that knife? [fol. 57] A. Yes.

Q. Where was that knife when you first saw it?

A. That knife was stuck in a pile of lumber just to the north of the incinerator and a little to the east.

Q. I show you a photograph, Mr. Brennan, and ask you whether this photograph shows the position of the axe when you first saw it.

A. Yes, it does.

Mr. Alexander: May this photograph be marked People's next in order, if your Honor please?

The Court: 12 for identification.

By Mr. Alexander:

Q. Now, you will observe, Mr. Brennan, on the right-hand side of that photograph appears to be some cardboard boxes—we can make out Maxwell House coffee—underneath appears to be a blanket: can you tell us what that depicts?

A. That is what we saw from looking over the fence from the west side, looking east down into the pile of boxes and debris that was piled up on the blanket.

[fol. 58] By Mr. Alexander:

Q. Is that the blanket in which the body of Linda Joyce was wrapped?

A: Yes, it is.

Q. Now, directing your attention to the blanket which has been marked People's Exhibit 3, do you recognize this blanket, Mr. Brennan?

A. Yes, I do.

Q. Is that the blanket in which the body of Linda Joyce was wrapped?

A. Yes, it is.

Q. Now, I show you a photograph and ask you if you recognize that photograph?

A. Yes, I do.

Q. Does that show the position of the knife when you first saw the knife, which is People's Exhibit 6?

A. Yes, it does.

Mr. Alexander: May this be marked People's Exhibit—

The Court: 13 for identification.

Mr. Alexander: 13 for identification.

Q. Now, I notice, Mr. Brennan, that this knife appears to be upon a piece of wood and in the immediate vicinity there are other pieces of wood. Now, directing your attention to People's Exhibit 1, can you tell us where that knife was found?

A. It was just about in this position here (indicating), about 30 inches from the ground stuck into a pile of lumber, [fol. 59] this pile of lumber here (indicating).

Q. On People's Exhibit 1 that is marked "Wood pile"; is that right?

A. That is right.

Q. Now, directing your attention to People's Exhibit 7 which is an ice pick; do you recognize this ice pick?

A. Yes, I do.

Q. Where was the ice pick when you first saw it?

A. The ice pick was in the garage on a shelf just to the north of the doorway entrance.

Q. By the doorway entrance, do you mean the small door which was on the east side?

A. That is right.

Q. And that was inside the garage on a shelf?

A. That is right.

Q. Now, I show you what appears to be a ball peen hammer marked People's Exhibit 8 for identification; do you recognize that hammer?

A. Yes, I do.

Q. Where was that hammer when you first saw it?

A. That hammer was on the north end of the wood pile and had fallen down in behind and upon removing the wood, we found the hammer.

Q. You removed some of the pieces?

A. Some of the top pieces of board and found this down underneath.

[fol. 60] Q. Now, did you also look in that incinerator which appears upon People's Exhibit 1?

A. Yes, I did.

Q. When you looked into that incinerator, did you find anything?

A. Yes, I did.

Q. What?

A. I found a pair of—well, they were blue or green child's panties.

Q. Now, directing your attention to a pair of panties which have been marked People's Exhibit 10; do you recognize these panties, Mr. Brennan?

A. Yes, I do.

Q. Are they now in about the same condition that they were when you found them?

A. Yes, they are just about the same.

Q. That is they were in a torn condition?

A. Torn on the side.

Q. Now I direct your attention to a photograph and ask you whether you recognize this photograph (indicating)?

A. Yes, I do.

Mr. Alexander: May this be marked?

The Court: People's Exhibit 14 for identification.

By Mr. Alexander:

Q. Now, People's Exhibit 14 for identification, this photograph appears to be a photograph of an incinerator with [fol. 61] the door open and some article inside; what is that?

A. That is the incinerator with the door opening to the west and looking in from the east—from the east to the west, and showing the white article on the south side of the firebox in the incinerator; that is a pair of panties that I found there.

Q. These are the panties, that is People's Exhibit 10 which you see in the incinerator which appears upon the photograph, People's Exhibit 14; is that correct?

A. That is right.

Q. Now, did you see whether or not Linda Joyce was wearing shoes?

A. Yes. The body wrapped in the blanket had a pair of small red shoes on, low-cut shoes.

Q. I show you what appears to be a pair of red low-cut shoes, and ask you are these the shoes that were on the body when you saw it?

A. They appear to be the shoes.

Mr. Alexander: May these be marked as one exhibit, your Honor?

The Court: 15 for identification.

Mr. Alexander: People's 15.

Mr. Henderson: May I take some of those for you, Mr. Alexander to give you some additional space?

Mr. Alexander: No, that is all right.

Q. Now, Mr. Brennan, when the boxes were removed from the body, did you see the body wrapped in the [fol. 62] blanket?

A. Yes, I did.

Q. I show you a photograph and ask you whether this is a photograph of the body of Linda Joyce wrapped in that blanket after the boxes had been removed from the top of the body?

A. That is right, but all that we could see of the body was the arm and the feet protruding. The blanket was not opened and the body itself inside; however, we could

see the two feet and the arms and her hair and the shoulder of her dress.

Q. Well, is this a picture, an accurate picture of what you did see when the boxes were removed?

A. It is.

Mr. Alexander: May this be marked?

The Court: 16 for identification.

Mr. Hill: May I see that, Mr. Alexander, please?

Mr. Alexander: I thought you saw it.

Mr. Hill: No, not that one.

Mr. Alexander: I am sorry.

Q. Now, I show you another photograph, Mr. Brennan, which depicts the incinerator and what appears to be the body of Linda Joyce wrapped in the blanket: do you recognize that photograph?

A. Yes, I do.

Q. Now, that photograph is a photograph taken from [fol. 63] which direction?

A. That is taken from the south, looking northwest, and the incinerator and the body wrapped in the blanket behind the incinerator.

Q. And is that a fair representation of what you saw that day after the boxes had been removed from the body?

A. That is right.

Mr. Alexander: May this be marked People's exhibit next in order, your Honor?

The Court: 17.

By Mr. Alexander:

Q. Now, Officer Brennan, I show you a photograph which appears to have been taken through a lattice fence; do you recognize that photograph?

A. Yes, I do.

Q. Now, that photograph is what?

A. That is a photograph taken with the cameraman standing to the east of the lattice fence.

Q. That would be this fence (indicating)?

A. Yes, sir.

Q. And faced towards—

A. Facing west.

Q. —the incinerator.

Mr. Alexander: May this be marked People's 18?

The Court: 18.

By Mr. Alexander:

Q. Now, you observe in that photograph an incinerator, is that right?

[fol. 64] A. Yes, sir.

Q. And to the right of that incinerator, do you notice what appears to be an axe handle leaning up against the incinerator?

A. That is the upper part of the axe handle.

Q. And that is the upper part of the axe which is People's Exhibit 9; is that correct?

A. That is correct.

Q. And directing your attention to the wood that appears to the right of the incinerator as we look at that picture, is that the wood pile shown on People's Exhibit 1, and designated "Wood Pile"?

A. Yes, it is.

Q. And it was behind this wood pile, or rather I will ask you is this the wood pile from which you removed the ball peen hammer which is marked People's Exhibit 8?

A. Yes, it is.

Q. Did you notice, Mr. Brennan, whether or not the child was wearing a dress?

A. Yes, I did.

Q. I show you what appears to be a plaid dress, and ask you, is this the dress Linda Joyce was wearing when you saw—

A. The dress that I saw, I saw only a portion of the shoulder of the dress, but it appears the same pattern as this dress here.

[fol. 65]. Mr. Alexander: May that be marked People's—

The Court: 19 for identification.

Mr. Alexander: 19 for identification.

[fol. 66] Q. Mr. Brennan, I may have misspoken myself, but on the body when you first saw it were there just cardboard boxes or cardboard and wooden boxes?

A. There were cardboard boxes on the north part of of the body, the north portion of the body, that is the part of the body that was facing towards the north, and to the south of the body was some wooden milk crates, I believe they were, and they were right on the edge of the body, piled on the edge of the body.

[fol. 67] DR. FREDERICK D. NEWBARR, having been first duly sworn as a witness on behalf of The People, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Frederick D. Newbarr.

Direct examination.

By Mr. Henderson:

Q: Doctor Newbarr, are you a physician and surgeon licensed to practice your profession in the State of California?

A. Yes, sir.

Q. Will you tell us in a general way what your medical education and experience has been?

A. I graduated from Wayne University in 1917 and I had a postgraduate course at the New York Polyclinic Hospital in New York and at the City Hospital in New York, I practiced in Detroit.

Mr. Matthews: We will stipulate to the doctor's qualifications.

A. I was medical examiner.

Mr. Henderson: I will accept the stipulation.

Q. At the present time are you connected with the County of Los Angeles?

[fol. 68] A. Yes, sir.

Q. In what capacity?

A. Chief Autopsy Surgeon of the Los Angeles County Coroner's Department.

Q. How long have you had that position, Doctor?

A. As Chief Autopsy Surgeon since July, 1946, and as autopsy surgeon since 1938.

Q. Now, Doctor, did you recently perform an autopsy on the body of a child known as Linda Joyce Glucoft?

A. Yes, sir.

Q. When and where did you perform that autopsy?

A. The autopsy was performed on the 15th day of November, 1949, and was completed at 4:15 in the afternoon, at the Los Angeles County Coroner's Mortuary in the Hall of Justice.

Q. At the conclusion of your autopsy did you form an opinion as to the cause of the child's death?

A: Yes.

Q. What is your opinion as to the cause of that child's death?

A. The immediate cause of death was asphyxia due to strangulation. Other conditions were multiple severe injuries.

Q. Now, Doctor, in the performance of the autopsy were a series of photographs taken?

A. Yes, sir.

[fol. 69] Q. Do you have those photographs with you?

A. I do.

Mr. Henderson: May I have them, please?

(Documents produced.)

Q. You have another series of these photographs?

A. Yes, I have two others. I have a set of enlargements and another set of this size here.

Q. I have counted 15 of these photographs, is that correct, Doctor?

A. Yes, sir.

Mr. Henderson: Your Honor, may I mark these for identification?

The Court: Yes. Do you want to mark them—

Mr. Henderson: One by one, your Honor, if I may.

The Court: All right. Start with the number 20, 20 to 34.

By Mr. Henderson:

Q. Now, Doctor, is it true that this series of photographs that you handed to me which I have marked Exhibits 20 to 34 for identification, are accurate photographs.

of the various portions of the body of the child on which you performed the autopsy, taken at the time the autopsy was performed; is that true, Doctor?

A. Yes, sir.

[fol. 70] Q. Did you also prepare at the time of the autopsy, Doctor, a sketch of various portions of the child's body?

A. Yes, sir.

Q. And have you had those sketches photostated?

A. Yes, sir.

Q. Do you have those photostats here?

A. I do.

Mr. Henderson: Your Honor, I have four photostats here; may they be marked as Exhibits for identification?

The Court: 35, 36, 37 and 38; you said you had four?

Mr. Henderson: Yes, your Honor.

The Court: All right; 35 to 38 inclusive.

By Mr. Henderson:

Q. Doctor, did you prepare a written report of the findings that you made at the time of the autopsy?

A. Yes, sir.

Q. If I were to ask you to describe that autopsy in detail, would it be necessary for you to refer to your notes to refresh your recollection?

A. It would.

Q. Doctor, I am going to ask you to come down here and use the photographs and the photostats that have been marked for identification, and explain in detail what you found, what you saw, and what opinion you arrived at during the progress of this autopsy. May he step down here to do that, your Honor?

[fol. 71] The Court: Yes.

By Mr. Henderson:

Q. And if you have to use a photostat or a photograph, Doctor, you will notice that I have placed a number on the back of each in blue pencil, and will you just refer to the number when you handle a particular photograph or photostat?

A. Yes. The examination disclosed the body was that of a Caucasian female child, 6 years of age, measuring 3 feet 10½ inches in height and weighing 71 pounds.

There is a ligature wound twice around the neck with a single knot.

There is a piece of garment caught beneath the ligature on the left side. Exhibit Number 31, this photograph, shows the ligature and the piece of garment with the seam on the left side; in other words, this ligature is wound twice around the neck and the piece of garment is caught beneath the ligature on the left side. The knot is located on the anterior mid line, that means that the knot is located in front as you see it in this picture, referring again to Exhibit 31. The ligature was removed with a straight incision and placed end to end. The diameter of the circle thus formed measures 29/16ths inches; in other words, a straight incision was made on the right side, the ligature was carefully removed, was placed on a table, and diameter of that ligature was measured. It was 29/16ths inches. [fol. 72] Mr. Henderson: May I interrupt a moment, Doctor, and ask you this question—your Honor, I have what appears to be a necktie here.—

The Court: It has been marked 4 for identification already.

Mr. Henderson: Oh, excuse me.

Q. Have you seen Exhibit 4 for identification before, Doctor?

A. Yes, sir.

Q. Is that what you refer to as the ligature?

A. Yes, sir. The ligature measures about 1 inch in width and has left a marked impression upon the soft tissues of the neck. The ligature is in the nature of what might be commonly known as a woven necktie made up of several colors and designs. The soft tissues above and below the indentation made by the ligature show bluish discoloration. This photograph here—

Mr. Henderson: Will you refer to it by number, please, Doctor, excuse me.

A. Exhibit number 25. You will see a light area in the neck which is the area that corresponds to the point

that the ligature was applied. The bluish area shows a very definite line of demarcation below the light area and above the light area.

Examination of the eyes shows the sclerae to be markedly injected. That means that the whites of the eyes [fol. 73] were very reddened, the blood vessels stood out in bold relief.

On the right side of the head there are multiple wounds. In the low right temporal region there are two areas of abrasions and purplish discolorations close together. I would like to show you these on my original diagram. These diagrams are regular mimeographed forms which we fill in at the time of the autopsy.

The abrasions are diagramed in the low right temporal area, as you see them there.

Mr. Alexander: On 36.

A. On 36—and in the photograph they show up a little better.

[fol. 74] Q. Which photograph is that, Doctor?

A. Photograph No. 29. I am sorry I didn't bring that down to your end there. This shows the wounds that are marked on the original diagram, these two wounds here. In the photograph the wounds are easily seen. You see a more or less of a semi-circular area there and a semi-circular area close to it. Would you rather pass that or would you rather have me hold it?

To further describe those areas, they are somewhat semi-circular in outline and at the upper portion of each the tissue appears to have ruptured. It does not have the appearance of a clean-cut laceration. The convexity is directed upward; the lower extremities are open; the distance between the two open points measures one inch.

Now, the tissue which appears to have been ruptured are these dark areas which you see in Exhibit 29 at the upper part there, and the upper portion there; just behind the right ear there is a laceration vertical in direction but slightly curved in outline. It is located $1\frac{1}{4}$ inches above the external auditory meatus and $1\frac{1}{4}$ inches behind or posterior to that line. The opening in your ear is the external auditory meatus. The measurement is taken as if the body were in an upright position. The distance is

1¼ inches in this direction upward and 1¼ inches posteriorly, or to the back.

[fol. 75] On Exhibit 36 the laceration is shown there as I have described it, and I will show it to you in a photograph—just behind the right ear. This gives the same wound—

Q. What photograph is that, Doctor? Excuse me.

A. No. 24—and it is slightly curved in outline, above and behind the ear.

Incidentally, that laceration measures three-quarters of an inch in length and a quarter of an inch wide. The margins are reddish purple in color, sharp, and well defined. In other words, it had the appearance of a clean-cut laceration.

In the upper right parietal area there is a laceration slightly curved in outline and beveled on its lower margin which measures five-eighths of an inch in length.

On picture No. 23, this photograph is taken with the head lying on the table, which is flat, and the upper right parietal area is high on the right side. This is the laceration here that is referred to. I will describe it again—

Q. Doctor, may I interrupt? There is some layman's term for the word "laceration," so we will be sure to understand it. Does "cut" mean about the same?

A. It is. However, the skin may be lacerated due to a direct blow by a blunt instrument, which would be a [fol. 76] break in the tissue continuity; however, it would not be in the nature of a laceration. And when we speak of it as a laceration, it is a cut so-called, with a more or less sharp instrument.

The Court: Well, you would call it an open wound, usually of a minor character so far as size is concerned?

A. A laceration might be of a major character.

The Court: Well, I say ordinarily the word "laceration" doesn't indicate anything as to size, but indicates an open wound generally?

A. Yes, sir, indicates an open wound.

The Court: I think we might take our morning recess. We will take our morning recess, ladies and gentlemen of the jury, and keep in mind the admonition heretofore

given, don't talk about the case nor form or express any opinion. We will take a short recess.

(Recess.)

[fol. 77] The Court: Let the record show the jury, counsel, and defendant present.

You may proceed.

Let the record show that Dr. Newbarr has resumed his position.

The Witness: I wonder if the reporter would read my last statement. I don't know just where I left off.

The Court: I think you were at the injury to the right parietal.

The Witness: Yes, that is correct.

I will repeat that last statement. In the upper right parietal area there is a laceration slightly curved in outline and beveled on its lower margin, which measures five-eighths of an inch in length. The adjacent tissues show purplish discoloration. Now, just posteriorly—that means just behind—and slightly below there is another laceration five-eighths inches in length and linear in outline. That is this laceration (indicating).

By Mr. Henderson:

Q. What photograph is that, Doctor?

A. No. 23. And the second one described is the laceration just below and behind the curved laceration. That is this one here (indicating). That is on the right side of the head. The margins are slightly irregular and the adjacent tissues show purplish discoloration. The purplish discoloration is the dark area that you can easily see here [fol. 78] in this photograph.

In the occipital area, that is in the back of the head—there is a curved laceration which measures one and nine-sixteenths inches. The margins are somewhat serrated. That means that they are a little bit irregular—and the convexity is forward.

Mr. Alexander: What number?

A. Picture No. 20, at the back of the head,—this is the back of the body, this is the back of the head, and this is the curved laceration,—just below in the right occi-

pital region, that is in the back of the head slightly to the right of the midline—this is the midline, this is the right occipital region—there is a laceration which measures 15/16ths inches in length, and in its mid-portion there is a step-up—I will describe that in a minute—the margins are somewhat irregular in outline.

I would like to show you my diagram of that laceration which describes a step-up. It means that there is a little step-up from one laceration to the other. It may be two lacerations which are joined and therefore I will describe it as a step-up. It is not a curved laceration, it is not a linear laceration, it may be two lacerations, and, however, they are joined in the one and it is shown on the diagram right there, the one with the little notch going up and joining the other laceration.

[fol. 79] Mr. Alexander: What number is that diagram, Doctor?

A. The diagram is 35 and the picture is No. 24. This is the laceration here, you see it right here with a little step-up there and a laceration forward there. It is this laceration here with the step-up.

[fol. 80] In the lower occipital region—that means in the back of the head, and lower down on the right side, there is a laceration which measures $\frac{1}{2}$ inch in length and is linear in outline. The margins are sharp and well defined. That laceration is shown on picture number 24 and that is this laceration here (indicating) just below the one which shows the step-up—this laceration here (indicating).

On the left side of the head there is a laceration in the skull in the upper left parietal area. That is about so (indicating). This is the top of the head (indicating) and the parietal area takes in the portion from the temporal bone upward to the mid line at the top of the head. This laceration is in the skull in the upper left parietal area. It is more or less transverse in direction, meaning in this direction (indicating) and measures $\frac{3}{4}$ s of an inch in length. The margins are slightly irregular. That laceration is shown on Diagram number 36, showing the direction and the length of the laceration. You can see it right up there (indicating)—right there. That lacera-

tion is $\frac{3}{4}$ s of an inch in length and the margins are slightly irregular.

From there we go to the left occipital area. Now, in the left occipital area and that again is in the back of the head on the left side. Fairly high up and above the ear there is a laceration which measures $1\frac{1}{16}$ th inches in length. It is slightly curved in outline. The margins are some- [fol. 81] what irregular. I want to be sure that I identify the lacerations, so I will repeat that. In the left occipital area fairly high up and above the ear there is a laceration which measures $1\frac{1}{16}$ th inches in length. It is slightly curved in outline. The margins are somewhat irregular. That is this laceration that you see here (indicating). This is the ear; actually it is not in true perspective. This would give you the impression that it was directly above the ear. It was above the ear but it was also a little behind the ear. That is this laceration here (indicating).

Mr. Alexander: That is what picture?

A. That is picture number 22. That is the laceration right there (indicating), again referring to picture number 22.

Just below this laceration and above the ear there is a laceration, linear in outline, which measures $1\frac{1}{8}$ th inches in length and the margins are irregular. That is this laceration here (indicating), posterior to the laceration—that means behind the laceration—and in a backward position. Posterior to the lacerations just described there is a Y-shaped laceration with the open portion of the Y—and Y means the letter Y—with the open portion of the Y directed upward and backward. In other words, the Y—the open portion is directed in this manner (indicating). The laceration measures $1\frac{1}{4}$ inches to the bifurcation. [fol. 82] That means on a direct line; the Y is $1\frac{1}{4}$ inches. The upper limb, which is the upper part of the Y measures $\frac{5}{8}$ ths of an inch and the lower limb measures $\frac{1}{4}$ of an inch. The margins are irregular in outline. That laceration is seen in photograph number 22. I think you can see the letter Y with the upper limb and the lower limb and the stem easily in view. There is a laceration in the lower posterior neck. That means the lower part of the back of the neck, which measures $1\frac{3}{4}$ s inches in length.

Referring to my diagram Number 38, this is it, this

rather heavy mark is the diagram-atic sketch of the laceration and the direction of the laceration low down in the back of the neck. That same laceration is shown in picture number 20, as you see it there (indicating), low down in the back of the neck.

Further description of that laceration—there is marked beveling on the lower border. You all understand what beveling is, it is cutting at an angle. The laceration extends deep into the neck and passed between the 6th and the 7th cervical vertebrae and lacerates the spinal cord. In other words, that wound passed between the two servical vertebrae, the 6th and 7th, not only lacerating the covering of the cord, but lacerating the cord itself, the spinal cord.

There is practically no tissue reaction seen at any time. [fol. 83] It is my opinion that that wound was very definitely a post mortem wound, which means that it was a wound that was inflicted after death.

Just above this laceration are three superficial scratches. They are shown in my diagram. They are insignificant. I don't know what purpose it will serve except they are again referring to diagram Number 35, there are three more or less superficial scratches, is about what they amounted to, just above this very deep laceration. I think you can see them there in the diagram and much in the same direction as the deep laceration.

In the skin of the back there are multiple areas of purplish discoloration and linear areas of abrasions with purplish discoloration of the adjacent tissues. The abrasions and discolorations number approximately 12. Those are flesh wounds, they involve the skin and subcutaneous tissues, they are purple in color. I think I can help—they are easy to see on this diagram number 38, except, of course, the diagram doesn't show the purplish discolorations but the abrasions were no particular pattern. They were—a few of them were linear. Others were irregular. They were not in the nature of a laceration—abrasion, meaning that the tissue has been contused, it has been pressed, or it has been rubbed violently, I mean rubbed in the sense that a blunt instrument might contact the skin, or anything blunt if it were brought down with sufficient force to—and yet to just merely abrade the skin without

[fol. 84] actually breaking the skin—those are the abrasions. The picture may show the discolorations. They extend throughout the back as you see in the diagram.

Referring to picture number 20, this picture gives you a little better idea as to the discoloration and the abrasions of the skin as they were seen at the autopsy. They are pretty well distributed throughout the entire back.

The external genitalia was examined. That means the—well, just as it says, the external genitalia. It is the sex organs. The hymen is intact and the fourchette, the membrane is delicate and translucent, but definitely intact. The fourchette is at the lower part of the vagina. The vagina essentially is elliptical in shape, the vaginal wall. In the virgin there is a membrane which extends close to the skin, that is externally, it is not deep, it is very superficial; it is a translucent delicate membrane and in the lower portion the hymen doesn't exactly follow the outline of the vagina, it sweeps across in a curve and it leaves a little apron-like membrane at the lower portion. That is called the fourchette. And my experience in practically all cases of rape the fourchette is ruptured because at that point it has no support, it is a delicate membrane and doesn't require a great deal of force to rupture the membrane at that point. Therefore, it is my opinion that [fol. 85] the hymen is intact. The orifice measures $\frac{1}{2}$ by $\frac{1}{4}$ of an inch—merely a measurement, doesn't help us one way or the other. The soft tissues show no trauma other than slight reddish discoloration at the margins. There was a thin margin of reddish discoloration. Now, whether—just what type of irritation that was, I don't know. It was not damaging, it was not serious, simply a thin margin of reddish discoloration along the borders of the hymen. The vaginal floor and walls show no evidence of trauma. In other words, there was no injury to the soft tissues of the vagina. There is no evidence of free blood. The anus is intact. There is no evidence of trauma in the anal ring nor in the anal-rectal mucous membrane; in other words, there was no damage to the anus or the rectum.

In the skin of the right chest there are two small round puncture wounds. The upper wound is located $2\frac{1}{2}$ inches below the nipple line and $2\frac{1}{2}$ inches to the right of the mid-line.

[fol. 86] The nipple line is self explanatory. The mid-line is a line which is drawn through the center of the body on the anterior surface. Surrounding the opening and especially on its upper aspect—means on the upper margin toward the head—is an area of deep purplish discoloration. The opening measures $3/32$ nds of an inch, the margins are purple in color.

On diagram No. 37, the wound just described, diagrammatic sketch of the opening, is shown here on the anterior chest, and I think you can all see it. That is the upper opening. And the light portion around it tends to show the purplish discoloration above the adjacent tissues on the upper margin. That same opening is shown in picture No. 26 right there.

Now, referring to that same opening, and the opening, I remind you, measured $3/32$ nds of an inch. The margins are purple in color. The wound tract passes into the chest between the fourth and the fifth costal cartilages on the right side. The occipital cartilages are the extension from the ribs, where the bony rib ends to where it joins the sternum in front. In other words, it is at the same level as the rib of the same number. Passes into the chest between the fourth and fifth costal cartilages on the right side, passes through the middle and the lower lobes of the right lung and on the diaphragmatic surface of the lower lobe there is a hematoma which measures 2 inches by 2 [fol. 87] inches. A hematoma means that there was sufficient bleeding to form an antemortem clot, and the diaphragmatic surface of the lung being that portion of the lung which is directly above the diaphragm on that side. The wound tract continues through the diaphragm. The diaphragm is, as you know, a muscle, more or less muscle tissue which separates the organs of the abdomen from the organs of the chest—so this wound tract passed through the middle and lower lobes of the lung and continued through the diaphragm into the liver. The dome of the liver is directly below the diaphragm on the right side. The tract extends into the liver for a distance of one-half inch. In other words, the distance that it went into the liver was very small.

• There is ecchymosis along the entire wound tract, but no free blood is visible. That means that there is purplish

discoloration. There is extravasation of blood into the cellular tissue along the wound tract. The approximate distance from the skin surface to the terminal point of the wound tract measures $3\frac{1}{4}$ inches. The reason we say approximate is that the tissues in a child are pliable and it is difficult to state the exact length. That is approximately the length of the wound tract.

There is another puncture wound in the skin of the right chest located 3 inches below the nipple line and 4 [fol. 88] inches to the right of the midline. Another puncture wound 3 inches below the nipple line, which is self explanatory, and 4 inches to the right of the midline. This is the midline and this is 4 inches to the right. The opening measures $3/32$ nds of an inch. The margins are purple in color. The wound tract passes through the skin and soft tissues, and into the intercostal soft tissues between the fifth and sixth ribs, where that wound tract ends. There is ecchymosis along the entire wound tract. That is a short wound tract. It did not enter the chest cavity. The intercostal soft tissues are the soft tissues which we find between the ribs. That wound is shown in picture No. 26, as you see it right there.

There is a round opening in the skin of the left back which measures $3/32$ nds of an inch in diameter. That is this opening that you see here with the long line and description which is in my own handwriting—in the left back right there (indicating). I think we can show you that opening in our photograph.

Mr. Alexander: What number is that diagram?

A. Diagram No. 38. Here is the opening right here (indicating) in the photograph—photograph 20. Now, keeping that opening in mind tract passed through the soft tissues between the seventh and eighth ribs and continues into the lower lobe of the left lung for a distance of one inch. The distance from the surface of the skin [fol. 89] to the terminal point of the wound tract measures approximately $2\frac{1}{4}$ inches. There is ecchymosis along the wound tract but no free blood is seen. The statement that no free blood is seen—there was a little blood, and I mean by that—I don't want to convey the impression that

there was a big hemorrhage there. There was maybe half a teaspoonful of blood.

[fol. 90] Now, entering into more of the internal examination. Upon reflecting the scalp that means the method used in opening the head. An incision is made from behind one ear over the top of the head to a point behind the ear on the opposite side. The anterior portion or the front portion of the scalp is reflected forward and downward and the back portion is reflected backward. That movement or operation exposes only the scalp and the aponeurosis. Now, the aponeurosis is a tough membrane which is adherent to the skull on its external surface. Therefore, with that one movement all we examine up to the point would be the scalp and the aponeurosis. Upon reflecting the scalp there is ecchymosis. That means purplish discoloration or extravasation of blood into the cellular elements of the scalp itself. There is ecchymosis in the left frontal—this is the left frontal (indicating) and the left occipital right here (indicating), and the right parietal and occipital areas—the right occipital (indicating). Then just beneath the scalp on each side there is a temporal muscle. In mastication you can feel it. It is a muscle that covers the temporal bone. The skull at that point is very thin and the temporal muscle covers the bone at that point. There is hemorrhage into both temporal muscles. Again we have extravasation of blood into the cellular elements of the tissues. This is not in the nature of free blood; it is hemorrhage into the tissues. There is a [fol. 91] hematoma in the aponeurosis on the right side. Again we have hemorrhage which has occupied and formed a hematoma within the aponeurosis, and the aponeurosis, as I said, is the top membrane on the outside of the skull.

Before removing the calvarium, that is, the top of the skull—and at this point perhaps I had better tell you how the calvarium is removed so you will understand. We have an electric saw that starts at a point above one ear and goes around the front of the head to a small point on the opposite side, then the saw is directed upward to make a notch and around the back of the head, so that when the calvarium is replaced, it will fit perfectly. It is necessary to remove the calvarium in order to expose the brain coverings and the brain, and of course, the skull. The

operation itself is actually on the skull. Before removing the calvarium a depressed fracture is seen in the upper right parietal bone which measures $1\frac{1}{16}$ ths by $\frac{5}{8}$ ths inches; in other words, there was a direct depressed fracture at that point of the right parietal bone. That means on one side—on the right side. On removing the calvarium there is a thin subarachnoid hemorrhage which extends over both hemispheres of the brain. That is a traumatic hemorrhage. It is thin. However, this must not be confused with a diapedesis, which means that sometimes we have a little seepage or leakage of a vessel in the areas [fol. 92] just adjacent to blood vessels. There is a little thin reddish blood. However, this was in the nature of a subarachnoid hemorrhage. That means that it was a diffuse hemorrhage. Subarachnoid means below the arachnoid. As you approach the brain from the outside the first covering is the dura mater, the next covering is the arachnoid, and your third covering is the pia mater. The pia mater is so closely adherent to the brain that actually it cannot be dissected free because at several points it dips into the brain itself. However, the arachnoid dissected [fol. 93] free. This blood was beneath the arachnoid, which is a common location for a traumatic hemorrhage, traumatic meaning a common hemorrhage which is the result of injury. On cut section—that means dissection of the brain—the blood vessels show extreme congestion. The blood vessels are filled with blood and the capillaries through the white matter are filled with blood. The white matter is ordinarily, just as the expression sounds, white. It is white. However, in this case the capillaries were filled with blood and on transverse section you could see the hundreds of little dots of blood which is the result of cutting across thousands and thousands of capillaries, tiny blood vessels.

There is a depressed fracture in the left occipital area more or less round in outline and the fragments are comminuted.

[fol. 94] That means in the back of the head on the left side there is a depressed fracture in which the bone is broken up into small pieces.

The Court: If you get to a place where you can break, Doctor—

Mr. Alexander: Just about one line more, your Honor, to that particular portion, if he may finish that.

The Court: Yes.

The Witness: There are multiple linear fractures of the occipital bone on both sides. The linear fractures number 4 in all. In addition to this depressed fracture there were four linear fractures which extended throughout the back of the head.

Linear fractures mean more or less in a line.

That finishes that.

The Court: All right, thank you, Doctor.

We will take our recess.

Ladies and gentlemen, keep in mind the admonition, don't talk about the case, don't form or express any opinion.

Recess until 2:00 o'clock. Return here at 2:00 o'clock. The audience please remain seated until the jurors have left the court room.

(Whereupon an adjournment was taken until 2:00 o'clock p. m. of this same day.)

[f8l. 95] —AFTERNOON SESSION—2:00 P. M.

The Court: Let the record show the defendant, counsel, and jurors present, and the witness Dr. Newbarr present. You may proceed, Doctor.

DR. FREDERICK D. NEWBARR, resumed the stand.

Direct examination (resumed).

The Witness: Continuing with the examination.

Dissection of the upper respiratory organs and the neck revealed ecchymosis in the soft tissues of the neck. That means that there was extravasation of blood into the intra cellular elements of the soft tissues of the neck. The hyoid bone, the thyroid cartilage, and cricoid cartilage and tracheal rings are intact. Those are the bones that make up the organs of the upper respiratory tract. There is a small amount of mucous in the trachea and bronchi and the lumen is not obstructed. That means that there

is a small amount of mucous in the opening, the passageway, so to speak, of the trachea and bronchi. There is a small amount of mucous in there but it is not obstructed.

Both lungs lie free in their respective chest cavities and no free blood is visible. On cut section there is marked congestion and edema.

[fol. 96] Simply means that the lungs lie free in the chest cavity and cut section is when we section the lungs in half there is congestion and edema. That simply means that the blood vessels are all dilated. The organs of the abdomen are in normal position. There is no evidence of trauma. It means that there is no evidence of trauma, no evidence of injury to the abdomen.

The stomach contains about ten ounces of greyish brown granular fluid, particles of which appear to be white curds and pieces of orange are visible. Ten ounces is quite a bit. The description is only put in here for the benefit of showing that there was something in the stomach.

The question as to how long prior to death or unconsciousness she had partaken of a meal might be significant. Ten ounces is quite a bit and it would indicate that she had either had some fluid—white curds might be cottage cheese and pieces of orange—it might have been something in the nature of a fruit salad. At least the stomach had not been emptied. That would indicate a period of about from 4 to 6 hours.

Examination of vaginal smears for spermatozoa is negative. Acid phosphatase tests of vaginal and anal scrapings were negative for prostatic secretions. That means there was nothing to show that the child had been raped, nothing to show that the child had been raped or otherwise [fol. 97] violated.

That completes the examination.

Mr. Henderson: Will you take the witness stand, Doctor, please?

Q. Now, Doctor, you told the jury about some abrasions and discolorations on the child's back which were shown in the photograph marked 20 for identification. Could those abrasions and discolorations have been caused by the child being struck by the butt end of an ordinary axe?

A. They are in the nature of a superficial wound and when you speak of the butt end of the axe, you mean the metal end?

Q. I do.

A. If it were something of a glancing blow, I would say yes; in other words not—in my opinion, not a direct crashing blow.

Q. Now, Doctor, you told us about the fractures in the child's skull. How many fractures were there in all?

A. I believe there were six.

Q. Do you want to check that?

A. Yes, I would like to. (Examining document.) Yes, there were six.

Q. Now, Doctor, you told us about some semi-circular lacerations on the child's temple area shown in Exhibit 29 for identification. Do you have that in mind? I think [fol. 98] you said there were two of them quite close together.

A. Yes, sir.

Q. Could those two injuries have been caused with a weapon similar to this ball peen hammer marked Exhibit 8 for identification?

A. Yes, they could.

Q. Why do you say that, Doctor?

A. Because of the shape of the wounds and because of the fact that the upper extremity—the tissues were ruptured; they were not lacerated in the sense of a skin laceration. The tissue was broken due to having received a rather hard, blunt blow.

Q. Now, Doctor, you told us about the wound in the back of her neck which severed the spinal column. I think that was shown on photograph Number 20 for identification.

A. Yes, sir.

Q. Could that wound have been inflicted with a weapon similar to this knife marked 6 for identification?

A. Yes, it could.

Q. In your opinion, is that knife large enough and heavy enough to inflict a wound of that character?

A. Yes, it is.

Mr. Hill: I object to that as not within the purview of expert testimony.

The Court: I think the objection is good. The last question and answer are stricken and the jury is instructed [fol. 99] to disregard it.

By Mr. Henderson:

Q. Now, Doctor, you told us about the three puncture wounds of small width and some of them of considerable depth. I think two of them were on the child's chest and one on her back. They are illustrated in Exhibits 26 and 20 for identification. Now could those three wounds have been caused by an ice pick such as this ice pick marked 7 for identification?

Mr. Hill: The same objection, it is not within the purview of expert testimony.

The Court: Objection overruled.

A. I think they could have.

By Mr. Henderson:

Q. Doctor, was the child dressed when you first saw it in the morgue?

A. Yes, sir.

Q. Does this dress which has been marked 19 for identification look like the dress that the child had on at that time?

A. It looks exactly like it.

Q. Did you or some of your assistants, cut this dress in any way during the progress of the autopsy?

A. It was ordered removed. I did not do it myself.

Q. Do you know whether or not in that process the dress was cut?

A. It probably was.

Q. Now, Doctor, you mentioned in your testimony an [fol. 100] irritated area near the child's privates. Do you understand what I have in mind?

A. Yes, sir.

Q. In your opinion, could that irritation have been caused by some person fingering that child's privates on

the afternoon of Monday, the 14th of November of last year?

A. I think so, yes.

Q. In your opinion, could the child's privates have been fingered in such a fashion that it would have produced that irritation and the hymen still be intact?

A. Yes, sir.

Q. Now, Doctor, I am going to direct your attention again to the semi-circular marks of violence on the child's forehead which are shown in Exhibit 29 for identification. Now, as a doctor, do you have an opinion as to whether or not the child was dead or alive when those two injuries were inflicted on her person?

A. I do have an opinion.

Q. What is your opinion?

A. The child was alive.

Q. Why do you say that?

A. Because there is ecchymosis in the tissues, there is extra-tion of blood into the intra cellular elements.

Q. Can you make that a little simpler for us, Doctor?

A. Yes. In a post mortem wound—

Q. A post mortem, that means what?

[fol. 131] A. That means after death.

Q. All right, go ahead now.

A. Any incision or any rupture of tissue merely opens the vessel and the vessel bleeds on the surface. In an ante mortem wound, the bleeding takes place into the intra cellular elements because there is circulation through the tiny vessels and we get an ecchymotic discoloration such as is shown in this picture.

The Court: I wonder if you can clear up the question of ecchymosis and also you used the word extra-tion a number of times, Doctor; can you simplify that a little?

A. Yes. Ecchymosis is the discoloration which is caused by the extra-tion, or the blood entering the tissue itself. For instance, if you can visualize a single blood vessel, even after death that blood vessel might be filled with blood, and when you cut across that vessel, the blood that is in the vessel will rush out; but there will be no appreciable change in the intra cellular appearance of the organ itself. In other words in order to have ecchymosis or bleed-

ing into the intra cellular tissues, the individual, in my opinion, must be alive.

Q. Is that something like getting a black eye, Doctor?

A. Yes.

Q. If you hit a live man around the eye with your fist, he will get a black eye?

[fol. 102] A. Yes, that is correct.

Q. What happens if you hit a dead man with your fist on the eye?

A. It just leaves a brownish mark.

Q. And no black mark?

A. No black mark, no, sir.

Q. Now, Doctor, you told us about those three puncture wounds, two in the chest and one in the back, that are shown in the photograph marked Exhibits 26 and 20 for identification.

A. Yes, sir.

Q. In your opinion, was the child dead or alive when those three puncture wounds were inflicted on her body?

A. The child was alive.

[fol. 103] Q. Why do you say that?

A. For the same reason that there is ecchymosis around the margin of the opening in the skin. There is ecchymosis along the wound tract. It is very easily demonstrated. Further than that, in the one, the upper wound in the right chest which went through two lobes of the lung, there was a hematoma on the diaphragmatic surface of that lung which shows that there was quite considerable bleeding and that coagulated and had the appearance of an ante-mortem wound.

Q. Now, Doctor, directing your attention to the six skull fractures; do you have an opinion as to whether the child was dead or alive when she suffered those six head fractures?

A. I think the child was dying. The reason I say that is the amount of hemorrhage and the amount of brain damage is hardly sufficient, in relation to the amount of damage to the skull; however, she was alive, for two reasons: there was external bleeding from the wound in the scalp, and there was a subarachnoid hemorrhage over both hemispheres of the brain.

Q. As I understand it, Doctor, it is your opinion that the child was dead when she received that wound in the back of her neck which severed the spinal cord, is that right?

A. Yes, sir.

[fol. 104] Doctor, is it true that one of the photographs we marked for identification this morning was taken before the child was washed?

A. Several were taken before she was washed.

Q. Is there one of her face there before she was washed?

A. Yes, sir. That is the position—

Q. You have handed me 30 for identification. Now, this is a photograph of what?

A. Of the deceased Linda Joyce Glucoft.

Q. That is the right side of her face, is that correct?

A. Yes, sir.

Q. And that was taken before the child was washed, is that right?

A. Yes, sir.

Q. Perhaps you better explain to the jury what this is, Doctor.

A. Well, the body is thoroughly washed with soap and water before the autopsy begins. This picture shows the body as it appeared when it was brought into the morgue, and the relation remains the same, that is, we kept her lying in the position that she was found.

Q. Now, Doctor, do you have an opinion as to what any of the material is on that child's right cheek?

A. Yes, sir.

Q. What is it?

[fol. 105] A. It is blood.

Q. And is it blood on the cheek from the head wounds?

A. Yes.

Q. Does the material shown on that photograph have anything to do with your opinion as to the life or death of the child at the time the wounds were inflicted from which that blood flowed?

A. Except that she was alive.

Q. Do you want to show the jury what you mean by that, Doctor?

A. Yes. This picture was taken with the child lying

on her abdomen, which was the position in which she was found. We can show that a little better in some of the other pictures.

Q: If you can do that, go ahead, Doctor.

A. Now, before I explain this picture here, I would like to call your attention to the discoloration in the skin and the markings. This is what is known as post-mortem lividity.

Q: What number is that?

A. This is No. 27. The blood precipitates to the dependent portions after death and you can see here all the bluish discoloration which is all evidence of post-mortem lividity. Now, this picture was taken after this picture here.

By Mr. Hill:

Q. Referring by number, Doctor?

A. Referring now to picture No. 30. This was the [fols. 106-109] first picture that was taken after the child was brought to the morgue and she was placed on a table and we tried to maintain the same position that she was found, and that is the position; the dark streaks which you see on the face here below the eye and down the cheek and along the neck are streaks of blood, and the hair as you look at it is matted down with blood. This picture which was taken somewhat later than this, the body hadn't been washed as yet, shows this same view here, except that the body has been turned over and shows the postmortem lividity. These streaks of blood that you see here are the same streaks that you see on this side, except the body has been turned over.

Mr. Henderson: Cross-examine.

[fol. 110] RAY H. PINKER, having been first duly sworn as a witness on behalf of The People, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Ray H. Pinker.

Direct examination.

By Mr. Alexander:

Q. Mr. Pinker, will you state your occupation, please?

A. Technical Director Scientific Crime Investigation Laboratory of the Los Angeles Police Department.

Q. How long has that been your occupation?

A. For the past going on 21 years.

Q. Do you hold any degrees?

Mr. Hill: We will stipulate to Mr. Pinker's qualifications.

Mr. Alexander: We will accept that stipulation.

Q. Now, Mr. Pinker, on the 17th day of November, 1949, did you see this defendant?

A. I did.

Q. Did you observe the clothes he was wearing at that [fol. 111] time?

A. I did.

Q. Do you have those clothes with you now?

A. I have. They are contained in the bundle before me.

Q. Will you open that, please?

A. Yes.

Q. I show you a pair of trousers and ask you are these the trousers that he was wearing on the 17th day of November, 1949, when you saw him.

A. They appear to be the same trousers.

Q. I take it you went to the county jail and had him remove his clothes, is that right?

A. No; the clothing was delivered to me by one of the detectives.

Q. You recognize those trousers, though, as being the same as he wore on that day?

A. Yes; they appear to be the same in color and appearance.

Q. Now, after you received those trousers from the detective did you make any examination of them?

A. Yes, I did.

The Court: I think we had better mark them 39 for identification.

Mr. Alexander: Yes. Pardon me, 39.

Q. Now, Mr. Pinker, what examination of People's [fol. 112] Exhibit 39 did you make?

A. I first removed the debris contained in the trousers cuffs, and then I made an examination for contaminating stains.

Q. I notice that lower on the right trouser cuff there appears to be a stain; is that right?

A. Yes; it consists of a series of stains.

Q. What are those stains?

A. I found those stains to be stains of human blood.

Q. Did you on that day also do anything with the finger nails of this defendant?

A. Yes, sir; I clipped his finger nails. That was on the 17th of November, 1949.

Q. And after you clipped his finger nails what did you do?

A. Subsequently I made an examination of the finger nails, a microscopic examination, and a chemical test known as the benzidine test, and an examination by high magnification of some material contaminating two of the nails of the left hand.

Q. As a result of that examination did you form an opinion as to what that material was?

A. I did.

Q. What is your opinion?

A. It is my opinion that the reddish contamination under those two nails of the left hand was a contamination [fol. 113] of blood. I have the finger nails clippings with me.

Q. You say you have them with you?

A. Yes, sir. I hand you two phials, one is marked left hand and the other is marked right hand. Those are the finger nails I clipped on that occasion.

Q. Did you find the blood on the right or the left?

A. Two nails from the left hand.

Mr. Alexander: Now, may the little phial—I guess you called it that.

The Witness: Yes.

Mr. Alexander: May the little phial labeled left hand be marked People's Exhibit 40, if the court please?

The Court: Yes.

Mr. Alexander: And the one labeled right hand, may that be marked 41?

The Court: Yes, so marked.

By Mr. Alexander:

Q. Mr. Pinker, did you also visit the scene where Linda Joyce's body was found?

A. Yes. That was in the early morning of November 15, 1949.

Q. And did you there examine the incinerator on the west side of those premises?

A. I did.

Q. I show you a photograph and ask you if you recognize that photograph?

A. I do, yes.

[fol. 114] Mr. Alexander: May this be marked 42, your Honor?

The Court: 42.

By Mr. Alexander:

Q. Now, directing your attention to the lower portion of that incinerator, what did you find there?

A. I found the incinerator—that is, I found on the concrete facing of the incinerator on the back side at a point adjacent to where the head of the victim had been lying—I found that to be contaminated with splotches of blood, and in addition to the splotches of blood there were linear spray spatters as from a spurt. The spray spatters were caused by individual micro droplets of blood. They were linear; I mean, they occurred in a straight line.

[fol. 115] . . By Mr. Alexander:

Q. Directing your attention to People's Exhibit 39 again, and in particular to the series of stains on the lower trouser cuff, is that what you describe as a linear spray?

A. Yes; the same pattern exists on the outside of the right cuff area of the defendant's trousers, a linear type of stain composed of tiny micro droplets of blood, which were spattered adjacent to each other in a straight line fashion.

Q. Now, I notice on People's Exhibit 39 at what might appear the top of that spray there is a small hole. Did you make that?

A. Yes, I made that hole and also another hole which occurs in an unstained area of the garment.

Q. What was your purpose in doing that?

A. My purpose in doing that was to remove a sample for the biological precipitant test and a control of the unstained portion for the same test, in order to ascertain the nature of that blood, whether it be human or animal.

Q. Did you determine whether it was human or animal blood?

A. Yes, I determined that it was human blood.

Q. And on each portion wherever it was cut out, the blood that was there, you cut it out to make those tests?

A. No, the blood was only present in connection with the lower cut-out portion. There was no blood in connection with the upper cut-out portion. I used that as a [fol. 116] blank or control in the precipitant test.

Q. Did you also examine the vicinity of that incinerator to take samples of the shrubbery or plants that were there?

A. Yes, I observed the contamination of the surface of the earth behind the incinerator. However, I removed samples from the blanket which had been lying on the ground which blanket had contained the body of the deceased.

Q. Did you also remove the debris that was found in the cuffs of the trousers, People's Exhibit 39?

A. I did.

Q. Did you make a comparison of the material you found

on the blanket with the material that you found in the cuffs of People's Exhibit 39?

A. Yes, sir.

Q. Do you have that material with you?

A. Yes. I hand you a glassine or cellophane envelope containing the debris which I removed from the blanket.

Mr. Alexander: May this be marked People's Exhibit 43?

The Court: People's Exhibit 43.

Mr. Matthews: May we see that, please?

Mr. Alexander: Do you have the material that you removed from the cuffs of People's Exhibit 39?

A. Yes. I hand you now a vial containing the debris which I removed from the trousers, People's Exhibit 39. [fol. 117] Mr. Matthews: May I have the last answer read, please?

(Answer read.)

Mr. Alexander: May this be marked People's Exhibit next in order?

The Court: People's Exhibit 44.

Mr. Matthews: May we see it, please?

Mr. Alexander: Yes.

Q. Now, when you say you removed the debris from the blanket, are you now referring to the blanket which is People's Exhibit 3?

A. Yes, this is the blanket (indicating).

Q. Now, after you removed the debris from the blanket and removed the debris from the trousers, People's Exhibit No. 39, did you make a comparison of that debris?

A. Yes, I made a microscopic comparison.

Q. What did you find?

A. I found that two types of vegetative or botanical debris to be common to both; namely, I found in the debris from the trousers cuff two portions of compound needles from Cypress trees. Cypress trees overhung the fence adjacent to the incinerator. I also found some small portions of grass stems—correction—grass leaves.

Q. Now, Mr. Pinker, I show you an axe which is People's

Exhibit 9 and ask you if you recognize this axe (indicating)?

[fol. 118] A. I do.

Q. When did you first see that axe?

A. I first saw this axe on the morning of the 15th of November 1949.

Q. Where was it?

A. It was at an address, 2001 or 2003 South Crescent Heights Boulevard. I have forgotten the exact number.

Q. Did you make an examination of this axe, People's Exhibit 9?

A. I did.

Q. As a result of that examination, what did you find?

A. I found the axe to be contaminated with human hairs and human blood particularly along the head portion and one side or face near the head portion of the axe.

Q. Did you do anything with the hairs that you found on People's Exhibit 9?

A. Yes, I made a microscopic comparison of those hairs with the hairs I removed from the body of one Linda Joyce Glucoft.

Q. As a result of that comparison, what did you find?

A. I found that the hairs contaminating the axe are microscopically similar to the hairs, to the lighter shade of hairs from the head of Linda Glucoft.

The Court: May I have that last answer read, please?

(Answer read.)

[fol. 149] By Mr. Alexander:

Q. I show you a knife which has been identified as People's Exhibit 6 and ask you if you recognize that knife, Mr. Pinker?

A. I do.

Q. When did you first see that knife?

A. I first saw this knife on the same occasion, on the same day.

Q. That was on the 15th of November, 1949?

A. Yes, sir.

Q. Did you make an examination of the knife, People's Exhibit 6?

A. I did.

Q. What did you find when you made that examination?

A. I found that the knife was contaminated with a single strand of hair. It was also contaminated with a reddish substance extending over an area of the tip of the blade and particularly one face of the blade. I removed the hair for microscopic examination and determined from the analysis that the reddish substance was human blood.

Q. Did you also make a comparison of the hair you found on the axe with hair from the head of the deceased?

A. Yes, I compared it with the hair of Linda Glucoft.

Q. What did you find?

A. I found it to be strands of hair similar to the hair of Linda Glucoft.

Q. I show you an ice pick, People's Exhibit 7; do you [fols. 120-122] recognize that, Mr. Pinker?

A. I do.

Q. Did you also examine that pick?

A. I did.

Q. What examination did you make?

A. I made a microscopic examination and performed a number of benzidine tests.

Q. As a result of those benzidine tests, what did you find?

A. I found that the blade portion and the metal ferrule at the base of the cylindrical blade gave weak positive benzidine test reactions. The benzidine reaction—the benzidine test is a presumptive test for blood. I was unable to find any material which I could examine at high magnification in order to confirm the substance as being blood.

Mr. Alexander: Cross-examine.

[fol. 123] ARNOLD W. CARLSON, having been first duly sworn as a witness on behalf of the People, was examined and testified as follows:

The Clerk: Your name, please?

The Witness: Arnold W. Carlson.

Mr. Matthews: Now, your Honor, it is a matter of public knowledge, I believe, that Officer Carlson arrested the defendant Stroble. We ask for the exclusion of witnesses, of all witnesses who had anything to do with the arrest or detention of the defendant Stroble until he was taken before a magistrate.

The Court: The motion will be denied.

[fol. 124] Direct examination.

By Mr. Henderson:

Q. Mr. Carlson, are you a member of the Police Department of the City of Los Angeles?

A. Yes, I am.

Q. Did you arrest the defendant in this case?

A. Yes, I did.

Q. On what date did you arrest him?

A. On November 17, 1949.

Q. Was that a Thursday?

A. Yes, it was.

Q. About what time did you place him under arrest?

A. It was approximately 11:50 or 11:55 A. M.

Q. Now, before you placed the defendant under arrest did some citizen direct your attention to the defendant?

A. Yes, he did.

Q. Where was the defendant when you first saw him?

A. He was in the bar of a restaurant on South Hill, near Fifth and Hill.

Q. Let's see; that is on the east side of Fifth Street, is it,—I mean, on Hill Street?

[fol. 125] A. That is on the west side of Hill.

Q. Between what streets?

A. Between Fifth and Fourth.

Q. What was the defendant doing when you saw him?

A. He was drinking a glass of beer.

Q. You placed him under arrest, did you?

A. Yes, I did.

Q. Where did you take him?

A. I took him down to the park foreman's office in Pershing Square.

Q. What did you do there?

A. I searched him, I made a thorough search and emptied his possessions on the desk and handcuffed him.

Q. Did you call for help?

A. Yes, I did, I called Homicide.

Q. Did some one respond to your call?

A. Yes, they did.

Q. Did you turn Mr. Stroble over to the men who responded to the call?

A. Yes, sir.

Q. Did you go with them some place?

A. Yes, we took the defendant to the Wilshire Police Station.

Q. Did you meet Mr. Brennan and his partner there?

A. Yes, I did.

Q. They were the detectives on the case?

[fol. 126] A. That is right.

Q. After arriving at Wilshire did you turn Mr. Stroble over to Sergeant Brennan and Mr. Tullock?

A. I did, yes.

Mr. Henderson: You may cross-examine.

Cross-examination.

By Mr. Matthews:

Q. Officer Carlson, did you have any conversation with the defendant at the time that you arrested him, or at any time while he was in your custody?

A. None, except I asked him what his name was, as I was taking him down to the Pershing Square office.

Q. What did he say?

A. He said—I asked him if his name was Fred Stroble and he said yes.

Q. But you had no other conversation with him?

A. Not that I recall, other than giving him directions while I was searching him—telling him to turn around and so forth.

Q. You took him from this bar down to this—What is that, a substation of some kind?

A. It is the office of the park foreman. It is a subterranean office in the center of Pershing Square on Hill Street.

Q. When you went downstairs—Is that downstairs?
[fol. 127] A. Yes.

Q. When you went downstairs with the defendant Stroble were you accompanied by any one?

A. The citizen who had pointed him out.

Q. And when you arrived downstairs were there any other persons in there other than this citizen and you and Mr. Stroble?

A. Yes, there was the park foreman.

Q. What is his name?

A. I don't recall his name offhand.

Q. Who else was there?

A. There was two other employees of the park who were down there.

Q. Were they in any way connected with the police department?

A. No, they were not.

Q. Was the defendant—Did you have him handcuffed?

A. No, not as I was walking him down into the office.

Q. When you arrived downstairs there was the foreman and two other employees of the park there?

A. Yes. The two other employees I told to lock the doors. They left almost as soon as we got there.

Q. I see. Was there a phone down there?

A. Yes.

Q. And you immediately communicated with your superiors?

[fol. 128] A. Yes.

Q. So there was this citizen who had pointed out the defendant Stroble to you, yourself, Stroble, the park foreman, and two other employees, is that right?

A. That is correct.

Q. No one else?

A. Not that I recall.

Q. Anyone else come in before you left there with Mr. Stroble?

A. No.

Q. Now, when you searched him, how did you do it?

A. How did I search—

Q. Yes. I will ask you this; for instance, when you searched him did you ask him to stand and put both his hands on the wall, like this?

A. I did, yes.

Q. And is that the way you searched him?

A. Yes.

Q. And at that time did you strike him?

A. No, I didn't.

Q. You in no way inflicted any kind of physical injury on him, is that right?

A. I did not.

Q. Or at any time?

A. I did not.

Q. Did you have a blackjack on you that day?

[fol. 129] A. I did.

Q. Did you show it to Mr. Stroble?

A. I don't recall that I did.

Mr. Matthews: No further questions.

Redirect examination.

By Mr. Alexander:

Q. Was there any occasion for you to use any blackjack or any physical force of any kind?

Mr. Hill: I object to that as calling for a conclusion.

The Court: Objection sustained.

Mr. Alexander: That is all.

Sergeant Brennan, please.

W. H. BRENNAN, was recalled and was examined and testified further as follows:

The Clerk: You are W. H. Brennan?

The Witness: W. H. Brennan.

Direct examination.

By Mr. Alexander:

Q. Now, Sergeant Brennan, on the 17th of November, 1949, when did you first see the defendant Stroble?

A. I saw him at approximately 12:30, at the Wilshire Station downstairs.

[fol. 130] Q. Out on the street, is that?

A. No, it was in the station. I was coming down the stairs from the Detective Bureau and Officer Carlson was coming up the stairs with Mr. Stroble.

Q. Were you alone or with some one else?

A. I was with Sergeant Tullock—I beg your pardon, I was alone coming downstairs.

Q. After you met the defendant Stroble and Officer Carlson, what did you do?

A. I went out—we turned around immediately and I was joined by Captain Harry Didion and we went out to the front where a car was waiting and we got in the back seat of the automobile.

Q. Who got into that automobile?

A. Well, it was Officer Carlson and Mr. Stroble and myself got in back. In the front seat of the car there was an officer from Central Homicide, I believe his name is Anderson, Captain Elliott of Central Homicide, and Captain Didion.

Q. Now, as you drove away from the Wilshire Station where were you bound for, by the way?

A. We were bound for the District Attorney's office.

Q. In that automobile did you have any conversation with this defendant?

A. I did.

Q. Did you promise him any reward or extend any hope [fol. 131] of immunity to him?

A. I did not.

Q. Did you use any force or threats of any kind whatsoever?

A. I did not.

Q. Were the statements he made to you free and voluntary?

A. They were.

Mr. Hill: May I inquire on voir dire, if your Honor please?

The Court: As soon as Mr. Alexander is through with his voir dire.

Mr. Alexander: I am about to ask him the conversation, your Honor.

The Court: All right, you may inquire, Mr. Hill.

Examination on voir dire.

By Mr. Hill:

Q. Mr. Brennan, did the defendant at any time after he first came into your view up to the time that you arrived at the District Attorney's office request that he have an opportunity to communicate with any member of his family?

A. He did not.

Q. At any time did he ask to communicate with a lawyer?

[fol. 132] A. He did not.

Q. Specifically, didn't he ask to see Attorney John Gray?

A. He did not.

Q. Did he ask that he be allowed to telephone or have you telephone to Attorney John Gray?

A. He did not.

Q. Did you at any time inform the defendant that anything he might say might be used against him?

Mr. Alexander: To which we will object as immaterial.

The Court: Objection sustained. That wouldn't be part of the voir dire.

By Mr. Hill:

Q. At any time did you tell him that he had a right to remain silent?

Mr. Alexander: The same objection, if the court please?

The Court: Same rulings.

Mr. Hill: What was the ruling, if your Honor please?

The Court: I don't think it is part of the voir dire cross-examination.

Mr. Hill: It goes to the question of free and voluntary.

The Court: The failure to do either of those things would not make a confession involuntary—assuming that there was such a failure.

By Mr. Hill:

Q. At the time that you started on this trip to the District Attorney's office did you have knowledge that a com-

plaint charging Stroble with murder had been filed in the [fol. 133] Municipal Court the day preceding?

A. I did.

Q. And that a warrant of arrest had been issued by a judge of the Municipal Court before whom a complaint had been filed?

A. I did.

[fol. 134] By Mr. Hill:

Q. Did you take Stroble immediately to the District Attorney's office?

A. I did.

Q. Did you take him, before going to the District Attorney's office, to the Municipal Court?

Mr. Alexander: That is immaterial, if the Court please.

The Court: I will allow the question. You may answer. We have to develop it sooner or later.

A. I did not.

By Mr. Hill:

Q. The Municipal Court is located in this building, the Hall of Justice, on the 7th floor, isn't it?

A. That is right.

Q. The criminal division thereof?

A. Yes, it is.

Q. The District Attorney's office is located on the 6th floor of this same building, isn't it?

A. That is right.

Mr. Hill: That is all on voir dire.

By Mr. Alexander:

Q. Now, Sergeant Brennan, will you kindly relate the conversation that you had with the defendant Stroble in that automobile?

Mr. Hill: I object to that—

Mr. Alexander: May I finish?

Mr. Hill: I am sorry.

Mr. Matthews: Just one more question. Sergeant Brennan, had you—

[fol. 135] nan, had you—

The Court: Just a minute, Mr. Matthews, one attorney at a time.

By Mr. Hill:

Q. This conversation which Mr. Alexander is asking you to relate, have you prior to this date related to Mr. Alexander what you say the defendant said in this conversation to you?

A. I have.

Mr. Hill: That is all.

By Mr. Alexander:

Q. You have no reason to hide anything from us, have you?

Mr. Hill: Just a minute, I object to that as argumentative.

The Court: Well, objection sustained. I think I know the reason for the question, obviously to show that the District Attorney had knowledge of the contents of the conversation that is the question.

Mr. Hill: Yes.

By Mr. Alexander:

Q. Now, Sergeant Brennan, will you give us that conversation?

Mr. Hill: I object to that, there is no foundation laid that it was of a free and voluntary character.

The Court: Objection overruled.

Mr. Alexander: Give us the conversation in the car.

A. When we first got into the car, we rode along about, I would say eight or ten blocks and the defendant Stroble [fol. 136] was sitting between Officer Carlson and myself. I turned to the defendant and I said, "How do you feel, Fred?" And he said, "Oh, I feel okay." I said, "Where did you go?" He said, "Well, after that terrible thing happened," he said, "I went down to the beach, down to Ocean Park. I was going to do away with myself." I said, "What do you mean by that terrible thing?" He said, "When the little girl got killed." I said, "Do you mean

when you killed the little girl?" He said, "Yes." He said, "I was going down to the beach. I was going to jump in the ocean and commit suicide but I decided that I would have to pay on the other side so I might as well come back and pay on this side."

At this time I asked him what he intended to do when he came back, and he said, "Well, I wanted to call Mr. Anderson and Mr. Rodehouse—I believe, but I have forgotten the other name, but anyway it was the Superintendent of the Helms—or rather the Van de Kamp' Bakery. He wanted to call those up before he gave himself up. He said, "I went into the cafeteria—or the restaurant—to get a glass of beer. I thought I would get a glass of beer and then I would call them up and then I would call the police up and give myself up." That was about the extent of the conversation.

Mr. Alexander: Cross-examine.

Mr. Hill: No cross-examination.

Mr. Alexander: Thank you, Sergeant.

[fol. 137] THAD F. BROWN, having been first duly sworn as a witness on behalf of the People, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Thad F. Brown.

Direct examination.

By Mr. Alexander:

Q. Do you have that transcript with you?

A. I do not.

Q. All right, Chief Brown, your occupation is what?

A. I am Deputy Chief of Police, Los Angeles Police Department.

Q. How long have you been connected with the Police Department of the City of Los Angeles?

A. In four more days it will be 24 years.

Q. Was that your occupation, Deputy Chief of Police, on the 17th of November, 1949?

A. It was Commander of the Detective Bureau.

Q. On that date, Chief, did you see this defendant, Fred Stroble?

A. I did.

Q. Where was he when you first saw him?

A. In the District Attorney's office in this building on the 6th floor.

Q. Can you tell us who else was present at that time?

A. There were numerous other officers. The transcript, [fol. 138] I believe, bears the names. District Attorney Simpson, Deputy District Attorney Fred Henderson, Inspector Donohoe of the Police Department, Captain of Detectives of the Homicide Bureau—Captain Elliott, Sergeant Tullock and Sergeant Brennan, Officer Carlson and quite a number of other officers and members of the District Attorney's office.

Q. At that time did Mr. Henderson question this defendant Stroble?

A. He did.

Q. Were any force or threats used on this defendant?

A. No, sir.

Q. Were there any promises of reward or hope of immunity extended to him?

A. No, sir.

Q. Were the statements he made free and voluntary?

A. They were.

Q. Chief Brown, do you now recall the conversation that Mr. Henderson had with this defendant at that time?

A. Not all of it, no, sir, it was quite lengthy.

Q. During the questioning of this defendant did you observe whether or not any girls were taking stenotype notes of the conversation?

A. There were some four or five working in relays.

Q. After the conversation, Chief, did you see a transcript of the conversation that Mr. Henderson had with Stroble?

[fol. 139] A. I did.

Q. Would it be necessary for you to read that transcript in order to refresh your recollection as to the conversation that was had with the defendant Stroble on that day?

A. It would be.

Q. Now, I show you a transcript, Mr. Brown, and ask you whether you have read that transcript before?

A. Yes, sir, I have; I have read it several times.

Q. Is that transcript a fair and accurate transcript of the conversation had in the office of Mr. Simpson on the 17th day of November, 1945, with this defendant?

Mr. Hill: I object to that on the ground it calls for a conclusion and in furtherance of the objection I would like to inquire on voir dire.

The Court: On that one point?

Mr. Hill: Yes, your Honor.

The Court: You may do so. We will mark the transcript 45 for identification so we will have something to tie it to.

By Mr. Hill:

Q. Mr. Brown, during the entire length from the beginning to the end of this conversation, it was being recorded, wasn't it?

A. It was, on a wire recorder.

Q. Have you heard that recording?

The Court: The voir dire is as to the transcript, not something else.

[fol. 140] Mr. Hill: This is a preliminary question to that.

The Court: Limit yourself to the subject matter, please.

Mr. Hill: We maintain that the recording, if your Honor please, is the best evidence of everything and I want to inquire—

The Court: If that is your contention, the Court radically disagrees with you. The best evidence rule applies to a document as to the contents of which document proof is sought. Therefore, if you seek to prove the contents of a specific document and the document itself is available, that document must be produced, but when you are referring to a conversation any method of repeating that conversation is admissible. The best evidence rule does not apply. I think the best illustration you and I are familiar with is this—if a witness at a preliminary examination gave certain testimony, which, we will say, was

at variance with his testimony at the trial, and if you want to impeach him at the trial by what he said at the preliminary examination, and there was a transcription—it might be a reporter's transcript or a wire recording or any typed record, that would be all right, but any person who heard the statement could testify to it. I think the same rule applies here.

By Mr. Hill:

Q. You yourself did not make any shorthand while this conversation was going on, did you?

A. No, Mr. Hill.

[fol. 141] Q. And in perusing what Mr. Alexander has now submitted to you for your inspection, you had no way of checking the shorthand notes to determine whether or not this was a full, true and accurate transcription of the shorthand notes?

A. Not with the shorthand notes, no.

Q. Did you compare it in any other manner?

A. Yes.

Q. What?

A. With the wire recording.

Mr. Hill: All right, we are right back to what I started to inquire about.

The Court: It makes no difference what he checked it up with. The proceeding, as we now have it, is that the witness is referred to a lengthy conversation. I think it is a matter of common knowledge and the Court will take judicial notice of the fact that in a lengthy conversation it is not possible for a person to remember all of the conversation from his independent memory as well as if he had something to refresh his recollection. Therefore, anything that will refresh his memory may be used by the witness to refresh it.

Mr. Hill: If it were a memorandum made under his direction, that is one thing.

The Court: I am sorry, but the Durant case refers to a memorandum not made under the witness' direction, which the witness was allowed to use to refresh his memory..

[fol. 142] Mr. Hill: Your Honor has in mind the Code of Civil Procedure section?

The Court: I am thoroughly familiar with the section, Mr. Hill. That section is in addition to the common law rule which still exists in California; in other words, the common law rule as to refreshing the memory of a witness still exists. The Code of Civil Procedure was enacted to supplement that and provide a means whereby memorandum itself which was made by the witness could be used as evidence by the party against whom the witnesses were testifying, which is not the rule of common law.

Mr. Hill: May I pursue further inquiry, if your Honor please?

The Court: Yes, surely.

By Mr. Hill:

Q. You did then compare in your reading of the transcript before you with the audition of the recording?

A. I did prior to the preliminary hearing.

Q. And was that the original wire recording or a copy thereof with certain deletions?

Mr. Alexander: Just a moment. ~~That is assuming a fact not in evidence, that there were any deletions.~~

The Court: Sustained.

Mr. Hill: I will withdraw the question.

Q. Do you know whether or not that was the original wire recording with which you compared in your reading of [fol. 143] the transcript and your listening to the recording?

A. Yes.

Mr. Hill: That is all on voir dire, if your Honor please, —oh, wait, one or two further questions, if your Honor please.

Q. Prior to the beginning of any conversation in the office of the District Attorney did you or any other officer take the defendant before the committing magistrate on the seventh floor?

A. I did not, nor did any one to my knowledge.

The Court: I wonder if it might be conceded to save time that the defendant, if it could not be stipulated that prior to this conversation defendant was not taken before a magistrate?

Mr. Alexander: The People will so stipulate.

Mr. Hill: All right. We will accept the stipulation.

The Court: To save time inquiring.

By Mr. Hill:

Q. What time was it when you arrived at the District Attorney's office?

A. When I arrived?

Q. Yes, sir.

A. Oh, I would say about fifteen minutes of one.

Q. There was already gathered in the office of Mr. William Simpson, the District Attorney, a number of persons there?

A. Yes. And more people arrived shortly thereafter. [fol. 144] Q. And before the conversation had with Mr. Stroble began there was a total of 19 other persons then present as listed on the first page of this transcription?

A. I think that is correct, Mr. Hill.

Q. And all of them were either members of the staff the District Attorney and his investigators or police officers?

A. That is true.

Q. In addition to that, five different stenographers in

A. Yes, sir.
relays?

Mr. Hill: That is all on voir dire, if your Honor please.

Mr. Henderson: May we approach the bench, your Honor, a moment?

(Whereupon the following proceedings were had at the bench, outside the hearing of the jury:)

Mr. Henderson: Your Honor, this is quite a long statement and portions of it refers to independent transactions with other children, which in my opinion are legally inadmissible at this trial. However, I understand it is the express wish of the defendant and defense counsel

that the transcript Mr. Brown now has be read in its entirety. Is that your wish, gentlemen?

Mr. Hill: If it is to be read at all, it is our wish for this reason, we anticipate it is going to be followed by [fol. 145] the recording. We want, if any recording—

Mr. Matthews: Let's make it contingent upon it being followed by the recording.

Mr. Henderson: That is our plan, to bring Mr. Brownson up tomorrow and play everything on the wire.

Mr. Hill: We want the original with all the intervals of space, silence, questions and answers as appears on the original recording—no copies or deletions—

Mr. Alexander: We will satisfy you with that, but now we are confining our talk to this present reading; do you want him to read the statement including other offenses?

Mr. Hill: Everything contained in the transcription to be read, with the understanding it may be followed by the original recording.

Mr. Alexander: May the record show the express request of the defendant?

Mr. Hill: Oh, yes.

The Court: Subject to the objection as to the admissibility, there is no objection to the entire conversation being produced before the jury by Thad Brown and by the recording?

Mr. Hill: Yes.

Mr. Matthews: Your Honor, I wonder if I might ask this question. Can you tell me why this statement is going to be made twice to the jury?

The Court: My crystal ball doesn't work that good. [fol. 146] Mr. Matthews: Yes, your Honor, but I think that is rather unfair, since we have memory pattern here to reimpress that on the jury.

The Court: No, not any more than having two officers testify as to the confession.

Mr. Matthews: Is that ever done?

The Court: Oh, yes.

Mr. Matthews: Identical?

The Court: Oh, yes.

Mr. Matthews: This is identical, you know.

The Court: True. As a matter of fact, I have tried a number of cases in which there were recordings and in which the testimony as to what was said and the recording was interposed.

[fol. 147] Mr. Matthews: Perhaps the recording may get away from them a little bit, you want a coherent picture of what was said.

The Court: We have this practical situation. I don't know whether in the minds of the District Attorneys or not, but just my own idea, but I think if the recording is played it is much more understandable to the jury who knows the subject matter of the recording or the contents of the recording before they hear the recording on the same subject. I think it would be perfectly permissible, within the scope of an opening statement, if counsel were sure that he was perfectly safe in doing so, to state that we will prove that the defendant in a conversation said so and so, and then read the statement.

Mr. Hill: I think that is true. Now, I am about to make an objection for the purposes of the record.

Mr. Henderson: Before you do that, may I say one thing, Mr. Hill? I don't want to mislead you gentlemen in any way whatever; there is material on the wire which is not present in the transcription Brown now has, mainly things that were said when we took time out and gave—had two or three little rest periods in there, Mr. Hill, and certain things were said back and forth—that does not appear in this transcript that the stenographers took.

Mr. Hill: That is why I am inquiring as to whether this was a full transcription of everything which occurred [fol. 148] on the recording.

Mr. Alexander: That is not part of the questioning of this defendant, is that right?

Mr. Henderson: I am talking about rest periods.

Mr. Matthews: Wait a minute, is it personal conversation?

The Court: You mean conversation between the officers and members of the District Attorney's staff and so forth?

Mr. Henderson: At times he would venture things to me, he would volunteer statements to me during these rest periods, your Honor. We sat close together and he would say

something to me and I would say something to him. The girls were not taking that down.

Mr. Matthews: Let me hear it tonight.

The Court: Well, you get that with a recording.

Mr. Matthews: That is what I mean.

The Court: We have the same situation here as though Chief Brown were testifying, regardless of recording as to what he related. If there is any part of the conversation you also want in, you can put it in.

Mr. Matthews: Well, Judge, I don't think anybody in that room heard all that conversation, but they were all present, you know, but I would like to hear that recording tonight.

Mr. Alexander: You have heard that recording.

Mr. Matthews: No, I haven't, Mr. Alexander, we have heard the other one, the second recording.

[fol. 149] Mr. Alexander: We have offered countless times for you fellows to come down and get together with us and you have turned us down; isn't that true? Our office has been open to you all the time.

Mr. Hill: We haven't been able to get together. We have heard the first six records which were reproduced, productions of the original tape.

Mr. Alexander: Supposing we proceed, but we want the record to show we know there is matters in the statement of other offenses which we do not believe—

The Court: That is all in the record.

Mr. Alexander: Very good.

The Court: You gentlemen have seen this statement. Have you seen this statement that Thad Brown has?

Mr. Matthews: Oh, yes, we have read it, your Honor. We were given a copy of it.

Mr. Hill: I am about to make an objection in furtherance of that; I want to argue in the absence of the jury.

The Court: Suppose we excuse the jury for the day and have the argument.

(Addressing Jury) Ladies and gentlemen of the jury, there are certain matters that will take a little time, and we have probably run pretty close to our normal recess time—rather than have you wait here, and everybody seems to agree we let the jury off early. You will be ex-

cused until 9:30 tomorrow morning. In the meantime, keep in mind the admonition, you are not to talk about the [fol. 150] case, nor form or express any opinion.

(Whereupon the jury left the court room, at 3:55 p. m.)

The Court: You may proceed, gentlemen.

Mr. Hill: May it please the Court, at this time we object to the offer to have read into evidence any statement attributed to the defendant on the ground that no proper foundation has been laid as to its free and voluntary character; and furthering the objection, referring to the objections made under the motion to set aside the information in the proceedings heretofore had in this Court under the provisions of Section 995 of the Penal Code, on the ground specifically that there has been a violation of the constitutional rights of the defendant, and it is in violation of due process as provided for in the Federal Constitution, and referring without further argument in furtherance of the objection to the brief already filed in this case under the motion made under Section 995—

The Court: And for the purpose of the record, may I say that the Court has read Mr. Hill's brief or the Public Defender's brief—I recognize Mr. Hill had a large part in it, knowing him so many years I know his language—I am familiar with quite a number of the cases there and it is a good brief; while it is a good brief, I don't agree with the objection.

Mr. Hill: The objection is overruled?

The Court: The objection is overruled.

[fol. 151] Mr. Hill: Now, we make a further objection, while the confession itself is admissible to connect the defendant with the commission of the crime of murder, the corpus delicti having been established by independent evidence, we object to its introduction into evidence for consideration of the jury with reference to the degree of the crime of murder, on the ground that the corpus delicti of first degree murder has not been established by independent evidence.

The Court: The answer to that proposition is rather simple, Mr. Hill; the confession is not to be excluded because the confession shows that a person is guilty of a

more serious crime than that charged in the information. The information doesn't charge first degree murder, but charges murder. It already appears from the evidence in this case the defendant on his way to the District Attorney's office when being taken down towards the Civic Center from the Wilshire Station confessed that he killed the little girl. That in itself is a confession of murder.

Mr. Hill: That is true. That is the very point I am contending for.

The Court: The point you have in mind I think is rather the point that a jury or the trier of facts cannot fix the degree of a murder if the sole means of fixing the degree lies in the extrajudicial statement, either admission or confession of the defendant, but the degree of the murder must be established by evidence independent of these statements [fol. 152] or declarations of the defendant. As to that rule of law I have no quarrel but it does not preclude the introduction of the confession. The person might be charged with petty theft. The fact that he admitted that he committed the petty theft by jimmying open a window and committing burglary wouldn't exclude the confession.

Mr. Hill: I quite agree with your Honor with relation to that, but I think it can only be admitted at this time with the stricture and admonition to the jury with reference to the limited purpose for which they may consider the confession so far as the determination of the defendant's culpability—

The Court: That is matter for instruction by the court to the jury which the court would not indulge in at this stage of the case, since the evidence is not all in. It would be rather futile for the court to give such an instruction at the present time and then to retract it, if assuming that you are correct, if thereafter appears that there is other and independent evidence of first degree murder.

Mr. Hill: I think I am correct.

The Court: Anything further?

Mr. Hill: Nothing further, if your Honor please.

The Court: I didn't know we would get through so fast.

Mr. Hill: Is the objection overruled?

[fol. 153]. The Court: The objection is overruled; if it is treated as a motion, the motion is denied.

We will take our recess until 9:30 tomorrow morning.

(Whereupon an adjournment was taken until Friday, January 6, 1950, at 9:30 o'clock a. m.)

January 6, 1950.

[fol. 154] The Court: In the case on trial, let the record show the jury, counsel and the defendant present. You may proceed, gentlemen.

Mr. Henderson: Your Honor, yesterday the transcript Mr. Brown referred to was marked 45 for identification. Inadvertently I gave the Clerk a very inferior copy of the transcript. I have a far more legible one here. May I substitute that as People's Exhibit 45 for identification?

Mr. Hill: No objection, your Honor.

The Court: Yes, you may withdraw the exhibit and substitute the other copy, 45 for identification.

Mr. Hill: If your Honor please, a situation has arisen whereby a witness was expected to be here this morning who is under subpoena. I have no word concerning his whereabouts and this is the point where it is required that the defense present him in furtherance of the situation with reference to the foundation not being laid with reference to the introduction of the purported statements in the confession of the defendant. I am at a loss to suggest anything at the present time to your Honor with reference to the absence of this witness who, if present, we would present at this moment.

The Court: Well, there are several things we can do. We can issue an attachment for the Sheriff to bring him in [fol. 155] or counsel might step to the bench and state to the Court for the record what the evidence will be and it may be possible that with that evidence, assuming it is admissible, the Court could make a ruling which would protect the rights of the defendant and at the same time would prevent a delay of the trial.

Mr. Hill: We fully anticipated being able to proceed at this time.

The Court: I presume that the return of the subpoena was dated the same as all subpoenas are, and the witness virtually had an hour to get in here, but he isn't here.

Mr. Hill: It is not our desire at all to delay the orderly process.

The Court: I appreciate the situation. I think I should state that you are fully within your rights when you have subpoenaed a witness and he is not here, and the witness' testimony belongs in this place in the case to ask for a bench warrant or an attachment for the witness.

Mr. Hill: We request that.

The Court: Attachment ordered. Bail on the attachment in the sum of \$1000.00.

The Clerk: What is the name of the witness?

The Court: Defense counsel will give you the name of the witness. We will have to take a recess, ladies and gentlemen and during this recess, keep in mind the admonition heretofore given you, don't talk about the case and don't form or express an opinion on it.

(Recess.)

[fol. 156] The Court: Let the record show the jury, counsel, and the defendant again present as they were before the recess.

Mr. Hill: If your Honor please, the witness concerning whom I addressed remarks to your Honor is in court, just late in responding to the subpoena. May I at this time—

The Court: Apparently so.

Mr. Hill: —at this time ask leave to put him on as part of the voir dire?

The Court: You may do so.

Mr. Hill: Mr. Miller.

WILLIAM MARTIN MILLER, having been first duly sworn as a witness on behalf of the defendant, was examined and testified on voir dire as follows:

The Clerk: And your name, please?

The Witness: William Martin Miller.

Examination on voir dire.

By Mr. Hill:

Q. Mr. Miller, what is your business or occupation?

A. I am a linen service driver.

Q. On the 17th of November, 1949, I will ask you if you saw Fred Stroble?

A. I did, yes.

Q. Where and what time was it when you first saw him? [fol. 157] A. It was ten minutes until twelve, and about 75 feet north of Fifth Street on Hill, on the east side of the street.

Q. And did you observe him go any place?

A. Yes, I followed him and he went to the corner, he crossed the street—he crossed Hill Street and went up the other side of the street and into Leighton's cafe.

Q. What did you do?

A. I followed him to that point and then I turned and went down to get the officer at the corner. I told the officer that I thought the man they were looking for was in this bar.

Q. Was that Officer Carlson?

A. Yes, it was.

Q. Did you accompany the officer when he went to the place where Fred Stroble then was?

A. Yes, I did.

Q. What occurred?

A. He walked up to Stroble and pulled him off the stool and searched him. I was standing approximately ten feet behind him at the time.

Q. Then what happened?

A. He just said "Let's go." And he asked me to get on the left side of Stroble and we walked to the park foreman's office at Pershing Square.

Q. Is that the subterranean office?

[fol. 158] A. Yes, it is.

Q. Did you go down there with Officer Carlson, who had the custody of Stroble?

A. Yes, sir.

Q. Then what occurred?

A. First, Officer Carlson called his office and reported the arrest and then he stood Stroble up facing the wall and put his hands up against the wall.

Q. Will you illustrate? Just step down from the witness-stand, using that wall behind you.

A. (Illustrating) He put his hands up like this against

the wall and kicked his feet out so he would be off balance for the search.

Q. At that time or before that did you see any display of any sap stick?

A. Not at that time, no.

Q. Did you notice anything happen with reference to taking that position as to whether he changed his position, whether he moved his feet in any manner, shifting his balance?

A. Oh, two or three times he put his feet forward.

Q. Did you notice anything happen with reference to Carlson's conduct at that time?

A. Carlson just kicked his feet back out again.

Q. In what manner did he kick his feet out?

A. With his own foot.

[fol. 159] Q. In kicking, on what portion of Stroble's body or legs?

A. His feet.

Q. His feet?

A. Yes.

Q. Using myself as an illustration will you come down here, Mr. Miller, and show me in what manner he did it?

A. Just like this (indicating). He kicked his feet.

Q. Did he kick them on the toes?

A. On the toes, and possibly it slipped off and he hit his shin once or twice.

Q. He kicked him up on the shin?

A. He probably did. I cannot say. I don't remember.

The Court: For the purpose of the record, Mr. Hill has assumed a position facing the wall, with his hands against the wall, leaning forward, and the witness illustrated by striking with the side of his foot against the toes of Mr. Hill. That was the illustration.

By Mr. Hill:

Q. You say his shoe slipped up in the kicking process and caught him on the shin?

A. It is possible. I cannot say for sure.

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By the Court:

Q. You don't know whether that happened or not?

A. It is hard to remember things like that.

By Mr. Hill:

Q. Now, did anything else happen at that time with reference to a sap stick?

A. Officer Carlson, while we were waiting for the homicide officers to come down, was pacing back and forth and he took out his sap stick and he held it up and asked Fred Stroble if he had ever seen one of these. I don't believe—I don't remember, but I don't believe that Fred Stroble answered at all. That is all there was and Officer Carlson put his sap stick away again.

[fol. 161] Q. Did Officer Carlson say anything with reference to the use of the sap stick?

A. Not that I can remember, no, sir.

Q. To refresh your recollection, do you know Mr. Edward N. Bliss?

A. Yes, I do.

Q. Investigator for the Public Defender's office?

A. Yes, I do.

Q. Sitting there?

A. Yes, sir.

Q. And do you know Mr. William F. Nagel of the Public Defender's office?

A. Yes, sir.

Q. Sitting against the wall?

A. Yes, sir.

Q. You had a conversation with them, did you not?

A. Yes, I did.

Q. About the 5th of January of this year?

A. Yes, sir.

Q. And did you make any statement to them with reference to remarks made by Carlson at the time that he pulled out the sap stick?

A. I told him I didn't think he said anything.

Q. What did Carlson do with the sap stick when he pulled it out?

A. He held it under Stroble's nose.

[fol. 162] Q. Now, I will ask you if you didn't, on January 5, 1950, in the presence of Mr. Bliss and Mr. Nagel, tell them that he, that Carlson made some remark at the time that he waved the sap stick under the nose of Mr. Stroble, to the effect that he ought to knock Stroble's head off, or words to that effect?

A. I did not say that.

Q. Well, what did you say?

Mr. Alexander: That is hearsay, if the Court please.
The Court: Sustained.

By Mr. Hill:

Q. What do you say now that Carlson said, if anything.

A. He either said, "Do you know what this is for?" or "Have you seen this?" I am not sure which he said. It is one of those two things.

Q. He did say that?

A. He did say that.

Q. And he had it under the face, near the face, and brandishing it under the nose?

A. Yes, sir.

Q. In what manner, did he wave it in any manner?

A. Oh, just like that (illustrating).

Q. Who else was in the subterranean office of the Park Foreman at that time?

A. A gentleman in uniform, I believe he was the Park Foreman. I was never introduced to him, however; and [fol. 163] two colored fellows that are attached to the park.

Q. Now, did you see the park foreman do anything with relation to Stroble so far as physical contact?

A. I saw the park foreman slap Stroble with his open hand and knock his glasses off.

Mr. Hill: Your witness, cross-examine.

Cross-examination.

By Mr. Henderson:

Q. Mr. Miller, when you illustrated on Mr. Hill's feet the kick that Carlson administered to Stroble's feet, is that about the way it happened?

A. Just about, yes.

Q. Was there any more force in the kick than you used?

A. Oh, probably more force, yes, probably more force than I used.

Q. Do you want to do the best you can on my feet and show how hard Officer—no, frankly, I would like to have you give us the best illustration of how he kicked him.

A. Well, I have seen the officers in the Los Angeles Police Force do it several times on winos and so forth, they picked up down town—it is exactly the same as Officer Carlson did, simply kicked his feet like that.

Q. Show me how hard he kicked him.

A. You don't want me to knock you down?

Q. Go ahead.

(Witness does as requested.)

[fol. 164] Q. Like that? .

A. Enough to—

Q. Did Stroble go down?

A. He did not go down.

Mr. Henderson: No further questions.

[fol. 165] By the Court:

Q. Just a minute, Mr. Miller. You referred to the park foreman striking Mr. Stroble. At what stage of the proceedings did that occur?

A. Oh, that was, oh, I would say three or four minutes after he sat back down after he had been searched.

Q. And was there anything that led up to it, or was it just something that suddenly popped into the picture?

A. I think it is after I had been talking to Stroble and asking him where he had been and so forth. The park foreman hadn't said anything.

Q. This may be objectionable, gentlemen. I am trying to get the picture—Was the slapping apparently produced by the conversation that was going on or did it just come out of a clear sky? Can you give us any idea on that?

A. I can't say exactly, your Honor.

Q. Can you give us any apparent cause for it?

A. I asked Stroble at one time if he was guilty of what he was accused and he mumbled something under his breath that sounded like "I guess I am," and then it was after that he was slapped.

The Court: Anything further, gentlemen?

Mr. Alexander: That is all.

Redirect examination.

By Mr. Hill:

Q. You say that the slapping by the foreman was before or after you had any conversation with Stroble?

A. It was after.

Mr. Hill: That is all.

If your Honor please, may this evidence be considered in conjunction with what occurred here yesterday in the absence of the jury?

The Court: Yes.

THAD BROWN, having been heretofore duly sworn as a witness on behalf of The People, was recalled:

The Court: Let the record show Chief Brown has resumed the stand. You may proceed.

The Witness: This is a "Statement of Fred Stroble, taken in the office of the District Attorney, by Deputy District Attorney Fred N. Henderson; in Room 649 Hall of Justice, at 1:00 P. M., November 17, 1949."

The Court: I don't know whether you got the record as you want it, but do you want to interpose an objection at this time?

Mr. Hill: We renew the objections made.

The Court: The objections will be overruled.

The Witness: (Reading.)

"Present: Wm. E. Simpson, District Attorney; Fred Henderson, Ernest Roll, Everett Davis, John Barnes, Adolph Alexander," all of the District Attorney's office, [fol. 167] "Harry Didion, Harry Elliott, W. H. Brennan, M. E. Tullock," Police Department, "Dave Brownson," of the District Attorney's office, "Thad Brown, Arnold W. Carlson, Ralph Anderson, Jack Donahoe, Ray Pinker, Lee Jones," of the Police Department, and "Leo Stanley," of the District Attorney's office, "George Banta," of the Police Department.

Mr. Hill: Pardon me just a moment, Mr. Brown. Have you given the offices held by everybody whose names you have read? I didn't follow it all the way through.

The Court: He did not, Mr. Hill. Those people there were connected either with the District Attorney's office or the Police Department?

The Witness: That is right.

The Court: And the stenographers, if there were any?

The Witness: That is right.

Mr. Hill: I think that will cover it.

The Court: You may proceed.

The Witness (Continuing reading):

"Questions by Mr. Henderson.

"Reported by Elizabeth Linder, Louise Greene, Beatrice Spencer, Carole Cristly, Fae Peveto," all attached to the District Attorney's office.

Your Honor, may I refer to the questions and answers as Q. and A.?

The Court: Yes, instead of saying question or answer [fol. 168] each time, just simply say Q. and A. each time. It will save a little time.

The Witness: (Continuing reading)

"Q. Are you Fred Stroble?

A. Yes.

Q. How old are you, Mr. Stroble?

A. I'm born in 1881, 7th of October.

Q. Where were you born?

A. Austria.

Q. How much schooling have you had?

A. Not very much, just grammar school.

Q. Go through the 8th grade, did you?

A. No.

Q. How many years did you spend in school?

A. Five years.

Q. How long have you been in the United States?

A. Since 1901.

Q. Can you speak a little louder? It's hard for me to hear you.

A. 1901.

Q. Did you ever go to a school in America?

A. No, didn't have the opportunity.

Q. Do you understand me all right?

A. I understand every word perfectly.

Q. Now, if I ask you a question and you don't understand what I say, you tell me you don't understand; will [fol. 169] you do that for me?

A. Yes.

[fol. 170] Q. Are you married?

A. Yes.

Q. What is your wife's name?

A. Louise Stroble.

Q. Where does your wife live?

A. She's in Norwalk in an institution.

Q. How long has she been in the institution?

A. Since war broke out, we went to Honolulu in 1941 and just a little bit before the war broke out, she got a shot

Q. Do you have any children?

A. I have one daughter.

Q. What is her name?

A. Sylvia Hausman.

Q. How old is Sylvia?

and she hasn't been recovered since.

Q. That was over in Honolulu, is that right?

A. Yes.

A. About 31.

Q. Where does Sylvia live?

A. In South Crescent Heights, 2003 South Crescent Heights.

Q. Do you know the telephone number there?

A. Yes, it's WH 7622.

Q. Is Sylvia married?

A. Yes.

Q. What is Sylvia's husband's name?

A. Reuben D. Hausman.

[fol. 171] "Q. How do you spell that name?

A. Hausman, H-a-u-s-m-a-n."

He spelled it out.

"Q. Is Reuben Sylvia's first husband?

A. No, Sylvia been married to Basil Balliner.

Q. Was Basil her first husband?

A. Yes.

Q. Was Reuben her second husband?

A. Second husband, yes.

Q. When did Sylvia marry Reuben, do you know?

A. We were in Honolulu in about '36, I went on vacation, worked for Van de Camp at that time, I took off about a couple of months and I went to Hawaii and she meet Mr. Hausman there and they got married about a year or so afterwards. He came back from the mainland, to the States, and he married her.

Q. Do you have any grandchildren?

A. Two.

Q. What are their names?

A. Rochelle and Fred.

Q. How old is Fred?

A. Fred is about 11.

Q. And who is Fred's father, Basil or Reuben?

A. Basil.

Q. Now Rochelle, how old is she?

A. About 7.

[fol. 172] "Q. And who is Rochelle's father?

A. Mr. Hausman.

Q. Does Fred go to school?

A. Yes, he goes to school.

Q. What school does Fred go to?

A. I couldn't really tell you. It must be right on La Cienega, from Venice Blvd., I think, about three or four blocks away where they live.

Q. It's about three or four blocks from Reuben's home to the school Fred goes to, is that right?

A. I don't know the name.

Q. Does Fred have a bicycle?

A. Yes.

Q. Does he ride the bike to school?

A. Yes, I think so.

Q. What sort of work do you do?

A. I'm a baker.

Q. Do you have a job now?

A. No, I didn't work since, I worked for Van de Camps for 21 years, Holland Dutch Bakeries.

Q. Here in Los Angeles?

A. In Los Angeles, one of the biggest outfits.

Q. When did you quit Van de Kamps?

A. I didn't really quit, I went on vacation in '46 first of April.

Q. Have you had any work since then?

[fol. 173] "A. No, when I came back the union started picketing, and I didn't go through the picket line, and they got kind of mad at me, five, six weeks after I want to go back, they said, 'No, Fred, you were the only ones we depended, we know you wouldn't let us down, you were always the top man, we always treated you good, top salary and everything, you were the only ones that didn't walk through the picket line.' That was the only thing against me, one of the finest people to work for, since then I'm lost, since then I'm not good, I have too much freedom and I don't know what to do with myself, got in all kind of mischief.

Q. Do you know Linda Glucoft?

A. Yes.

Q. How old is Linda?

A. About six.

Q. Little girl, is she?

A. Yes.

Q. Do you like her?

A. I like her very much.

Q. How long have you known Linda?

A. Since Hausman lived there, I think a couple of years.

Q. You met Linda when she was about four years old, is that right?

A. Four, something like that.

Q. How did you happen to get acquainted with Linda?

A. Well, she plays with my granddaughter.

[fol. 174] "Q. That's Rochelle?

A. Rochelle, yes.

Q. Does Linda come over to Rochelle's house a lot?

A. Every day.

Q. How far does Linda live from Rochelle?

A. Across the street.

Q. Do you know Linda's mother and dad?

A. I never spoke to them, but I saw them every day, in the evening, I generally only go over there once a week, that was before I got in trouble, I went over every week-end, Saturday and I stayed over until Sunday night.

Q. What does Linda do when she comes over to see Rochelle?

A. They play in the yard, like kids, they have a swing, all kind.

Q. Do you want to tell me about the back yard at Reuben's house?

A. Well, it's closed-in yard, has some tall trees, I don't know what you call them, just like a wall, you know, I would say about 15 feet high, that was a wide fence, wooden fence, then there's a garage in the yard, drive in from outside from the alley, then you have some kind of partition, wash line and a few fruit trees there, that's all I could say it is.

Q. Is it a one car or two car garage?

A. I think you could put in two cars there.

[fol. 175] "Q. You say there are some swings in the back yard? What sort of swings are there?

A. Well, there's pretty high, two and one and then they have where they slide down and one where they climb up, all-kind of exercises.

Q. Is there an incinerator in the back yard?

A. Yes.

Q. Where is the incinerator?

A. Right back from the swing, I would say about 20 minutes—about 20 feet.

Q. Is the incinerator near the garage?

A. Right near the garage. I would say about three feet in between.

Q. Do the Hausman's keep a lot of boxes and stuff around that incinerator?

A. No, they generally get rid of them.

Q. Are there any tools in the Hausman garage?

A. All kind of tools.

Q. Tell me about the tools in that garage.

A. They got axe, hammers and garden tools and what have you—everything.

Q. What sort of an axe is it?

A. About a big axe (demonstrating)—you know, regular axe.

Q. Long handle?

A. Long handle.

[fol. 176] Q. Two blades or one blade?

A. One blade.

Q. You remember the color of the handle of the axe?

A. White.

Q. Smooth handle, is it?

A. I think it is pretty smooth,—regular, regular handle. Nothing—

Q. Did you ever chop wood with the axe?

A. No, I don't think I ever had any—in the old place I used it over there when they had the new place in the Sierra Mar Drive right up from Doheny Drive before they moved down, they sold the place, where the hillside property—four story high, and they had them big trees there, what you call them, Eucalyptus trees. I chop some branches off because it was kind of shady for the house. That is the only time I used them.

Q. Keep that axe pretty sharp do they?

A. Sharp, yeah.

Q. And that axe is usually kept in the garage, is that right?

A. All the tools.

Q. What do they do, have it in a chest or out in the open in the garage?

A. When you came in there's a shelf has a—some kind of a supporter for the shelf and it was right there—that way.

[fol. 177] Q. When did you last see your daughter Sylvia?

A. Let's see.

Q. By the way, Mr. Ströble, do you understand how a calendar works?

A. Yeah, I know, but if I remember it.

Q. You just take a look at the calendar. This is the November, 1949, and take your time now and tell me when you last saw your daughter.

A. When I saw last was Monday.

Q. What day of the month was that?

A. That was last week. This—this last Monday.

Q. That would be Monday, November the 14th of this year, is that right, sir?

A. Yeah, I can see the date, but it was this Monday. That was about—she took Rochelle to a party. It was about, I imagine 3:00 o'clock when she left.

Q. Were you living at Sylvia's house at that time?

A. Why I stayed over there, yeah.

Q. About when did you go to Sylvia's house?

A. I went over there.

Q. Do you want to look at the calendar again?

A. Two, three days before that. I think it was—I think was Thursday or Friday. I could not really remember. Thursday or Friday a week before.

Q. About what time of the day did you get there on Thursday?

[fol. 178] "A. I got there about noon. I would say about 2:00 o'clock—something like that.

Q. Did somebody drive you there?

A. No, I took the red car and dropped off. I—I got off the La Cienega Boulevard—is only one block from there down to Sylvia's house.

Q. You were alone, were you, when you went to the house?

A. Alone, yeah.

Q. Did you have a suitcase with you?

A. I didn't.

Q. Did you have all your clothes with you?

A. No, I only have a part of the clothes and the other is all in the garage in big suitcases.

Q. Now, the garage you're talking about, is that the garage at R-uben's house?

A. Yeah. I used to stay there before that happened. Why my son-in-law found out, you know John Gray, that a lawyer—you know when I got arrested about this—up in 6262 Verdugo Road and John Gray put up—he signed for the bond, and since that day I think it was on the fifth of May when that happened. Since then, I stayed over at Reuben's house a couple of days.

Q. Tell me this, Mr. Stroble, when you went to your daughter's home that Thursday, did you call her up and tell her you were coming or anything like that?

A. No, I didn't call her up.

[fol. 179] Q. You just went up and rang the doorbell, is that the idea?

A. Yeah.

Q. You stayed there Friday, is that right?

A. No, let me see—Friday, Saturday, Sunday and Monday that happened.

Q. You were there Thursday, Friday, Saturday, Sunday, Monday, is that right?

A. I wasn't sure if I was there see, I couldn't really—I have to really concentrate if it was Thursday.

Q. Well, take your time. If at any time you want to stop and think awhile, you just tell me and we'll give you all the time you want.

A. Let's see. I came—

Q. Tell me this—

A. (Interrupting) I came from Mexico at that time.

Q. Mr. Stroble, where did you sleep when you stayed at Reuben's house?

A. Oh, there's a—near the kitchen supposed to be a dining room, and they have a little bed in there. They used to have a servant there, see. I sleep in the bed.

Q. About what time did you get up Monday?

A. Oh, I got up about 5:00 o'clock—5:30, I would say.

Q. Who was living in the house that Monday?

A. Mr. Hausman and Mrs. Hausman—two kids.

Q. What did you do when you got up?

[fol. 180] A. Shaved myself and made myself a cup of coffee and walked out.

Q. What did you do that Monday morning?

A. I went downtown—walked around—got back about noon—about 2:00 o'clock.

Q. Did you go downtown on the bus?

A. No, on the red car there is right nearby, about a block away from LaCienega Boulevard.

Q. Did you go back out to Reuben's house on the red car?

A. Red car.

Q. About what time did you get home from downtown?

A. Oh, I would say about two or two-thirty.

Q. Were you alone when you went to the house?

A. You mean Monday?

Q. Yeah.

A. Monday—I—let me see. I was alone when I got over there.

Q. Who was in the house?

A. Sylvia was there. I think it was before—before—I think it was before 2:00 o'clock—maybe half-past one.

Q. Then is when you got off—

Mr. Hill: Mr. Brown, that is "That's when you got off the red car."

A. That is right, Mr. Hill. Thank you.

Q. That's when you got off the red car and walked [fol. 181] down to Reuben's house, is that right?

A. Yeah.

Q. Now, when you went in Reuben's house, who was there?

A. Mrs. Hausman.

Q. Anybody else?

A. No. She was laying in bed and she said, 'Let me sleep a little bit.' So I walked from the back yard—then I walked to the kitchen. It was open, had some wash going there and dryer, so I walked in there. I walked through the house. She said, 'Who is it?' I said, 'Me.' She said, 'Let me sleep a little while. I have to take Rochelle to a party.' About three o'clock then after I stick around for about half an hour first, then she got up and dressed up the kid and I think she left about 3:00 o'clock, or some thing like that, or 3:15, I would say.

Q. About what time did Rochelle get home?

A. I don't know.

Q. Did Rochelle go to school that day?

A. Yeah. She got home at 2:00 o'clock. That's the regular time that she got home.

Q. And when Rochelle got home you and Sylvia and Rochelle were alone in the house, the three of you, is that right?

A. That's right.

Q. What happened when Rochelle got home?

A. Well, she sent—she sent me out—my daughter sent [fol. 182] me out for some ribbon. They had a box; I don't know what was in the box I don't know. She said, 'I'd like to have some ribbon to tie up the box.'

Q. Did you go out and buy some ribbon somewhere?

A. Oh, let's see; it's only about a half block away from there, right behind the garage across the empty lot.

Q. What kind of ribbon did you buy?

A. Oh, some kind of purple ribbon about a quarter of an inch thick.

Q. What color was it?

A. Purple.

Q. Who did you buy the ribbon from?

A. From five and ten.

Q. Do you know the name of the person you bought it from?

A. No, I don't. -I just picked it out.

Q. What did you do after you bought the ribbon?

[fol. 183] A. I brought it home and gave it to my daughter.

Q. When you came back with the ribbon who was at the house?

A. Nobody in the house except Mrs. Hausman, my granddaughter and Rochelle.

Q. What happened when you got home with the ribbon?

A. Well, she dress her up and tie up the box.

Q. Do you know what party Rochelle was going to that afternoon?

A. No, in Wilshire somewhere.

Q. Rochelle was dressed up, was she?

A. She was dressed up in white, yes.

Q. About what time did Rochelle leave the house to go to the party on Wilshire?

A. About 3:15, something like that.

Q. How did she go?

A. With Mrs. Hausman.

Q. Did they walk?

A. They took a taxi.

Q. Who called the taxicab, do you know?

A. Mrs. Hausman.

Q. Were you there when the taxicab arrived?

A. Yes.

Q. Who was in the house when that Yellow cab pulled up in front of R-uben's house?

A. I was in the house.

[fol. 184] Q. Was anybody else?

A. No, I was right by the door.

Q. Where was your daughter and granddaughter then?

A. They went in the taxi.

Q. Where was Freddy?

A. Freddy didn't come home from school until around that time.

Q. Are you sure—

A. He was talking to his mother outside and she said, 'Be sure to be back at five,' or something like that. I don't think Freddy came into the house. I don't think so.

Q. Did you think Freddy and his mother talked out on the sidewalk in front of the house?

A. Yes, she said, 'Don't stay any later than five five o'clock.' That's his regular time he got to be home no matter where he play. He always play outside, sometimes school ground, football, baseball, whatever they play.

Q. Do you know of anything else they talked about?

A. No, I couldn't say.

Q. Talk about a test in spelling?

A. Maybe there was something, he has to go home and that, but I don't remember. I went back in the kitchen. I had a couple of drinks.

Q. Tell me this, Mr. Stroble, was there any talk about potatoes when your daughter left to go on the party?

[fol. 185] Tell me about the potatoes.

A. She said, 'Dad, put on the leg of lamb in the ice box.' I put it on and asked what they wanted on it and they said to put some potatoes on and she said, 'I'll call up about what time to turn on the fire. It only takes about 20 minutes.' She said, 'When I come back we have mashed potatoes and a leg of lamb.' I put the fire on at 2:50 and set the oven at 300.

Q. Tell me this, Mr. Stroble, when your daughter and granddaughter drove away in a cab, you were alone in Ruben's house, is that right?

A. Yes.

Q. Fred was not there?

A. Fred wasn't there. He and the boy went to play. I don't know.

Q. What happened while you were alone in that house?

A. While I was sitting in the front room, had a couple of drinks.

Q. What did you drink?

A. Some whiskey.

Q. What kind of whiskey?

A. Oh, what they call it, it was not special brand.

Q. Scotch or bourbon?

A. Bourbon.

Q. All right. What happened?

A. I had some wine, I started drinking the day before, [fol. 186] I was pretty well soaked. They didn't notice, I was so nervous because my son-in-law told me, he said, 'You are going to have to give yourself up on account of the other charge.' And so I kept on drinking.

Q. What happened when you were drinking?

A. I walked in the front room and there comes Rochelle across the street.

Q. Where was she when you first saw her?

A. Well, her mother drove her over to her brother's school then they came back. She came over to the house.

Q. Was Linda alone?

A. She was alone. She come over lots of times alone.

By Mr. Simpson:

Q. When you said Rochelle awhile ago, you meant Linda came across the street, didn't you?

A. Yes, that was my mistake.

By Mr. Henderson:

Q. What did Linda do when she came toward the house?

A. Well, like always, we were close friends.

Q. Did Linda come into the house?

A. I gave her a chocolate bar. Every time they come over I give them a chocolate bar. We buy candy for the boys for Richard and Robert, whoever comes over; I give anybody candy.

Q. Were you in the front room when you gave Linda the candy?

A. Yes, gave her the candy in the front room.

[fol. 187] Q. What happened then?

A. I had two, I had one in my pocket here and I didn't even know it.

Q. You are indicating your right pants pocket; is that right? You had some candy there?

A. Yes. It was pretty soft, so I said, 'Don't take that; I got another one,' and I went in the little room and I said, 'Which one do you want?' I said, 'I have this one. The other one is soft.'

Q. What kind of candy was it?

A. It was chocolate bar—Hershey bar. Then we went in the bedroom. She said, 'Where is Rochelle?'

Mr. Matthews: I wonder if we cannot give Mr. Brown a break. It is just about recess time.

The Court: All right. I kind of lost track of the time.

We will take our recess. Keep in mind the admonition heretofore given, don't talk about the case, and don't form or express any opinion.

(Recess.)

[fol. 188] (After recess.)

The Court: The record will show the jury, counsel, and the defendant present as we were at the time we took the recess.

You may proceed, Mr. Brown.

The Witness: (Continuing reading)

"Q. Which bedroom did you go into?"

A. The kid's bedroom.

Q. All right, what happened in the kid's bedroom?

A. We went in there. I always thought she was a nice girl. I liked her; kind of kissed her and I got—I don't know, I can't believe what happened.

Q. Did you kiss Linda?

A. Yes. She kissed me, too, Rochelle and all the kids.

Q. Were you standing up or sitting down when she kissed you?

A. Oh, I was standing up. Then I was saying something to her. I say—we was really too close.

Q. Just go ahead, Mr. Stroble, and tell about it."

Mr. Simpson interposes a statement, "Take it easy."

"A. I said—I squeeze her, you know, and then with my finger there and play around, and I say, 'Let me see,' you know, and she said, 'That isn't nice,' and we started in playing, like.

[fol. 189] "Q. Now, when you squeezed her, were you standing up or sitting down?

A. I was sitting on the bed.

Q. And where was Linda when you squeezed her? Was she on the bed?

A. No, she was standing up.

Q. Standing in front of, or on the side of you?

A. In the front. She said, 'Let's go outside.'

Q. Tell me what you did with your finger.

A. Well,—

Q. Go ahead, tell me what you did with your finger. Did you put your finger on top of her dress or under her dress?

A. Under her dress.

Q. Did you ever put your finger inside of her little inside her panties?

A. First on top.

Q. What did you do with your finger when you had it on top of her panties?

A. Well, I tickled her.

Q. What did you do then?

A. She says, 'That's not nice.' 'Lift up your dress. I want to see what you got.'

Q. Did you ever put your finger inside of her little panties?

A. I did.

[fol. 190] "Q. Where did you put your finger when you had it inside of the little girl's panties?

A. Right inside.

Q. Right inside her vagina?

A. Yeah.

Q. Do you know what a vagina is?

A. Just about that far (indicating).

Q. About how far was that? An inch or an inch and a half?

A. No, no, just about an inch.

Q. Put it up inside the hole she makes water from, is that right?

A. Yes, but I didn't put it in that far.

Q. What did the little girl say when you did that?

A. She didn't like it afterwards.

Q. What did she say about it?

A. She said, 'Where's Rochelle?' I said, 'Rochelle is not here.' She wanted to go out and play. I say, 'Let's play here a little bit,' something like that, and I threw her on the bed.

Q. You threw her on the bed?

A. Yeah.

Q. Up until that time she had been standing in front of you?

A. Yes.

Q. Were your legs open? Was she standing between your [fol. 191] legs like this (indicating)?

A. Yes, I had her in between there. Then she wanted to go away, and she want to go outside and play.

Q. Tell us what you did with her when you threw her on the bed.

A. I lift up and put her on the bed, and she didn't like that; she started to scream.

Q. When you had her on the bed was she sitting on the bed?

A. Well, no. I laid her right down on the bed.

Q. You had her lying on the bed? Was she lying on her back?

A. She was laying on her back.

Q. Were her legs together?

A. Her legs were together at that time.

Q. What did you do when you had her on the bed on her back?

A. I told her, 'Let's play,' and she said, 'No, I'm going outside.'

Q. Well, did you play with her when she was in that position?

A. Yes.

Q. How did you play with her?

A. Just tickle her a little bit.

Q. What do you mean 'ticked her a little bit'? What do you mean by that?

[fol. 192] "A. Oh, that little bitty thing, you know.

Q. Did you put your hand up under her little panties and finger the hole between her legs?

A. Yes.

Q. What happened then?

A. Then she went to start to holler. She says 'I don't like that; I want to go out in the yard, and want to play outside.'

Q. Tell me. Mr. Stroble, when you had her on the bed on her back, did you get on top of her?

A. I always did that—lay on her and make believe you know, but I never took my thing out or anything like that. I just lay on her.

Q. Did you take your penis out of your pants at all?

A. No, I didn't.

Q. Did you have a hard on?

A. No, I was too nervous. I never was in a stake like that in my life. Water was running down, and I am shaking. I don't know what came over me.

Q. What happened then?

A. I was laying on top of her and she start in—she start to holler, you know. I said, 'Don't holler. I don't do you no harm.' Then she want to wrestle away and I hold her down.

Q. What did she holler?

A. Well, she want to scream, you know. She didn't [fol. 193] really say what she want to say, and all—she wanted to get away from me.

Q. Did she scream loud?

A. Well, she tried to scream loud, and—I don't know how it happened. I can't even—

Q. What did you do with your hands when she started to scream?

A. I didn't want her to talk. I was in a position—she was lying here—

Q. She was lying on the bed, was she?

A. She was lying on the bed, yes.

Q. Where were you?

A. I was laying on top of her. Then—we had been playing there lots of times. Some way, you know, my nature works that way. You know, if I just touch anybody like that, who I like—at that time, soon as they start undressing—and she don't want to give in and all. Then she want to start to holler and when this happened, I got ahold on her throat.

Q. You held your hands together like that in a choking position?

A. Yes (indicating).

Q. What was between your hands?

A. The collar and everything, you know, but when she got—

Q. Now, you say her collar; do you mean you had her [fol. 194] throat between your hands?

A. Throat, yes. Something else was between, too; that thing, the bottom of the collar. Then she got—she got kinda quiet, you know; didn't take very long.

Q. Tell me what you did with your hands when her throat was between them.

A. Well, I squeezed—I squeezed right here, and she couldn't holler. Then she got so quiet and I got up, and as soon as I get up and get a coat, and she start in squirming around and become wild again.

Q. Became what?

A. She got kind of lively again, you know. Then I look around and look for that—some necktie—something like

that, and I saw a thing behind the dresser—half a dozen neckties, and I took one off and put around her because I couldn't stand her suffering, you know. She went to holler all this and that. I thought—

Q. Now, where did you get the necktie from?

A. Right on the dresser—on the side a little.

Q. Was it lying on top of the dresser?

A. No, no, hanging.

Q. On a rack of some kind?

A. Here's the dresser, and here's a little wood there where I hang the neckties. There was about half dozen on it.

Q. Well, did you have to take a few steps to get the [fol. 195] necktie?

A. Yes, three or four steps.

Q. Was the little girl flat on her back on the bed when you took those few steps to get the necktie?

A. Yes.

Q. Did the little girl say anything to you when you walked to get the necktie?

A. No, she was already pretty tired out, you know.

Q. Quiet, was she?

A. Yes, she was hurt pretty bad.

Q. Do you remember anything about the necktie?

A. I took the necktie and I wanted to be sure she wouldn't come back, so I come back and try to tie it on her, but I couldn't even tie it, I was so shaky.

Q. Was it a four-in-hand tie or a bow tie?

A. No, it was knitted tie—looks to me like a knitted tie.

Q. A knitted tie?

A. That's way it looks to me.

Q. What did you do with the knitted tie?

A. I put around neck and tie it up.

Q. Well, what kind of a knot did you put in it?

A. Just a plain knot.

Q. You want to take my necktie and show me what kind of a knot you put in it?

A. Like this (indicating). That is some kind of loop, like."

[fol. 196] And the defendant was using Mr. Henderson's necktie at the time.

(Continuing reading.)

“Q. And was the girl’s neck inside the loop?

A. Yes.

Q. What did you do with the ends of the necktie then?

A. There was hardly any ends. It was only this long
(indicating).

Q. Did you pull the ends?

A. I tied it up, yes.

Q. What happened to the little girl when you did that?

A. Well, I couldn’t notice any life any more.

Q. Did you figure she was dead?

A. Well, I thought she was, but I went out in the kitchen and I didn’t know what to do. I got a couple of drinks.

Q. Tell me this, Mr. Stroble; when was it that you started to figure that the kid was dead?

A. Oh, I imagine five or eight minutes after—not long after when I had my hand on her.

Q. Did you figure she was still alive when you went out in the kitchen?

A. I went out in the kitchen and then she started moving around, and I didn’t know what the hell to do.

Q. What did you do out in the kitchen?

A. I went out to the kitchen and there was a hammer
[col. 197] in the drawer.

Q. A what?

A. A hammer.

Q. A hammer?

A. Yeah.

Q. Where was the hammer?

A. In the kitchen drawer.

Q. What sort of a hammer was it?

A. Oh, it was round on one side and square on the other side.

Q. All right. What did you do with the hammer?

A. I took her off the bed and laid her down on the blanket.

Q. What sort of a blanket was it?

A. Some kind of Indian blanket, something like that. Laid her down on there and I cover her up.

Q. What did you cover the girl up with?

A. With that blanket.

Q. You kind of folded her into the blanket, did you?

A. Yeah.

Q. What did you do that for?

A. I know she was not dead, and I talked to her. 'I don't like to see you suffer—anybody suffer.' Everything same just so—I can't—I cannot—'

Mr. Simpson interposed another statement, "Take it easy. Take it easy."

[fol. 198] A. "Then I cover her up and this was where her head was laying. If you—this is a very sensitive part, see."

Questions by Mr. Henderson:

Q. You are pointing to your right temple, is that right?

A. In the—let's see, the bed was this way and the blanket was in the bottom here, and I pulled it down and her head was laying here and her face was laying this way (indicating).

Q. Face was pointed away from the bed, is that right?

A. Yes, about a foot and a half, and then I took her up and took the hammer and figure I hit her right here on the side and must be—she couldn't live any longer because it is impossible. This is one of the most particular spots in the body.

Q. Did you hit her on the right temple?

A. You face this way (indicating) and put your face down, on top would be this side, wouldn't it? This side here. It would have been this side, yeah.

Q. The right side of her face was on the floor and you hit her on the left temple, is that right?

A. Yes, left temple.

Q. Which side of the hammer did you hit her with?

A. Oh, I don't know. I couldn't say. It was a round thing, a point there, but not much of a point to it.

Q. How hard did you hit her?

[fol. 199] A. I don't think I hit her very hard. I—I didn't have much strength; I was shaking and sweating—same shirt I got; it was soakin' wet around here. I was nervous.

Q. Did she move after you hit her on the forehead with the hammer?

A. She kinda moved when I hit her. Then I got scared that she is still alive and I pulled her out in the yard.

Q. Now, when you took her out in the yard did you take her out of that blanket or did you leave her in that blanket?

A. I wrapped her up. I wanted to carry her out, but I wasn't able to lift her up. I was so weak and shaky I didn't know what to do. I cannot leave her in the room, somebody come in that way. There are always some people coming there. Only way I could get her out of there was to cover her up. Got one foot on one end of the blanket and pulled her through—not front room.

Q. Den?

A. Den, yes. Through the den—went through and through the yard and look over across the street; people could see everything and know what was going on from the windows. I didn't think there was anybody over there. I couldn't see anything. I pulled over there through the yard and back to the incinerator.

[fol. 200] Q. Tell me this, Mr. Stroble, is it true that you sort of dragged the girl from the kid's bedroom out near the incinerator?

A. That is what I just told you.

Q. You didn't carry her in your arms?

A. I couldn't lift her up. I couldn't carry her. I was too nervous. Then I got more nervous and kinda cover her up and pull her out that way in case somebody look over the fence—so many people passing by and nobody would see me.

Q. When you dragged her out did you have her by the feet or by the head?

A. No, just by the blanket.

Q. Oh, I see.

A. Pull her out that way back in the incinerator. Then I wasn't sure. I hoped the kid is not suffering. Then I went back into the kitchen. I thought, well, everything is done anyhow. There was a little ice pick there. I would say about that long (indicating). I took the ice pick and went out there and felt where her heart is. I couldn't concentrate on where the heart was. I pushed one here and I think two in the back here (indicating). I don't know what side. I want to be sure I get the heart and she wouldn't have to suffer, see.

Q. Where did you get the ice pick from?

A. From the kitchen; that was in the kitchen.

[fol. 201] Q. Was it a sharp pick or a blunt pick?

A. No, it was not sharp.

Q. Kinda blunt was it?

A. Yeah, not so sharp.

Q. You say you punched her. What do you mean by that?

A. Usually when I was looking for the heart, you know—but I didn't feel anything. I wasn't sure on which side the heart was. I was all confused and pushed in. That is what I call 'punched in.'

Q. You mean you didn't stab her; you put the end of the pick against her body and then forced it in, is that right?

A. Yes, that's it. Then turned her over.

Q. Do you think you got near the heart?

[fol. 202] A. I don't know if I did or not. Then I wasn't sure. Then, I turned her over and gave her one or two punches in the other side in the shoulder blade. I must have it at once—I was all confused.

Q. When you punched her in the back, did you roll her over?

A. Rolled her over, yes.

Q. What did you do with the ice pick then?

A. I went in the ice box—in the garage and got the axe.

Q. Where was the axe?

A. Right across in the room—this thing that supports the shelf, you know—got the axe and went outside. In the meantime when I went in and got the axe, I put what they call it—ice pick on top of that shelf there—lots of tools there, you see. I don't know why I don't remember that, then I went back and got the axe and cover her up and was figuring if she is not dead, why, why, no use. I don't like to see suffer anybody, not even dog or cat. I said, 'Well, the damage is done. I might as well finish it up.'

Q. What did you do with the axe?

A. Well, just took it back, you know, gave it a couple of hits over the head a couple of times, in the back. I don't roll her over.

Q. Did you use the sharp end of the axe or, the blunt end of the axe?

[fol. 203] "A. No, no.

Q. What part of the little kid's body did you hit with the blunt end of the axe?

A. I didn't use the axe for that—the end part, you know, the flat part.

Q. Oh, I understand, the side of the axe, is that what you mean, sir?

A. Not the sharp.

Q. That metal part, though?

A. The metal part yeah.

Q. The side?

A. Yes.

Q. Where did you hit her, on the feet or stomach or where?

A. Not on her feet, she was laying on the back—on the stomach, covered her up and I was figuring, here's the back, and started hitting her all over see.

Q. Did you hit her on the head with the side of the axe?

A. A couple of times—I wanted to be sure. On the side.

Q. On the back with the side of the axe?

A. On the back, I was figuring on the back the backbone or whatever it was, I don't want to have her suffer, make it as quick as possible.

Q. How many times did you hit her with the axe?

A. Four or five times.

[fol. 204] "Q. What did you do then?

A. I think that was all.

Q. What did you do with the axe?

A. I put it right behind, right on the side by the incinerator, standing up.

Q. Now, think it over and see if you didn't do something else, Mr. Stroble.

A. Oh, wait a minute, when I got through with the axe, I went in the kitchen, that was the last time, I wanted to make it sure, I went out in the kitchen and got that knife, about that long (indicating).

Q. How long is that about?

A. I would say, a regular kitchen knife, you know, I would say about two inches wide, one inch thick.

Q. Did it have a handle?

A. Had a handle.

Q. Tell me about the handle.

A. I didn't know nothing about a handle.

Q. Was it a white handle?

A. Dark handle.

Q. Dark handle?

A. Dark handle, yeah.

Q. Wooden handle?

A. Wooden handle. I don't know if it was wooden or some kind of an imitation like a new invention.

Q. You got that knife from where?

[fol. 205] "A. From the kitchen.

Q. Now, you're telling me what you did after you put the axe down, is that right?

A. That's right, that was, that was at last. I think I was all through with her. I was not sure, I wanted to be sure about it. I could not look at her. Then I went back and put the knife—some kind of thing there (indicating)—and put it off.

Q. Kind of a rack is it?

A. Yes, rack, yeah and went out and stabbed her in the neck.

Q. You say you stabbed her in the neck?

A. Yes.

Q. In the front or the side of where?

A. No, right in the middle of the neck.

Q. Back in the back?

A. Yes, right in the back. That was the last I did.

Q. Did you stab her like this (indicating downward movement)?

A. No, I wanted to be sure I got that particular spot.

Q. What spot were you aiming for?

A. I tell you how this came to my mind. I saw when I was in Mexico, when they get through in a bullfight, well, bulls are already dead and they go there; that's the last [fol. 206] "thing" he does, is take a short knife about that long (indicating), goes over there and throws that knife right behind the neck there, but that's the final.

Q. You figured that if you did that there would be no doubt about the fact that she was dead, is that right?

A. Yes, I was worrying about her suffering.

Q. How far in did you drive the point of that knife, do you have any idea?

A. I would say about that far (indicating).

Q. An inch, or inch and a half?

A. Half an inch, three quarters of an inch.

Q. What did you do with the knife, then?

A. Put it right along side of her, when I used it, dropped it right there.

Q. You dropped the knife close to the little child's body, is that right?

A. Well, I would say outside of blanket somewhere, I couldn't really say, but anyhow, I left it there, I didn't want to move it away from there.

Q. Did you stick it in a board or anything like that?

A. No, not what I know of, that was the last act, I wanted to be sure, see.

Q. Now, do you remember where you left the axe?

A. I remember that that was not the last act, it was before I used the knife, right there's the incinerator, put it right there, standing up. Near the incinerator (indicating).

Q. Now, take your time, Mr. Stroble, did you use the knife first or the axe first?

A. The axe first.

Q. And you left the axe near the body?

A. Near the body, but I was not sure if she's really still alive or—but she was unconscious as far as I was concerned, but I wanted to be sure, I really did like her, I don't know, I can't even believe that I did it.

Q. Now, where did you put that hammer?

A. The hammer I—when I got through, just threw it over, I don't know where the hammer is. There is a whole lot of wood there on the side of the incinerator, that far away, oh, kind of—I would say square inch sticks, plenty of them. I was there a couple minutes and I thought I did—I—

Q. Wait a second.

Q. Now, when you hit the little girl with the hammer, was the rug over her left temple?

A. Over. She was always covered when I hit her.

Q. You didn't hit her with the head of that hammer on the bare flesh, did you?

A. No, I couldn't, I couldn't. Anything I do when she was covered up.

Q. And you put the ice pick back on the shelf in the garage?

[fol. 208] A. In the garage, and got the axe, and I put the ice pick on top there where the other tools are.

Q. Now, what did you do when you got rid of the knife?

A. The knife—I was—dropped it right there. I don't remember. I took the knife away from there.

Q. What did you do then?

A. Then, I got ready. I went in the house. I regulate the first of the flames for the potatoes. I turned off the potatoes.

Q. Were the potatoes done then?

A. No, maybe half. I turned it off. Then I went out.

Q. Where was the little girl when you were turning the stove off, back by the incinerator?

A. She was back there.

Q. What did you do then?

A. I put my coat on and went to a—Venice Boulevard is about a block away from there and went out to Ocean Park.

Q. Now, when you left the little girl, was she still wrapped up—in the blanket?

A. She was still wrapped up. I cover her up and look around for all kind of boxes—what I could find there. I was in the yard there—throw on her, so they won't notice it right away, see.

Q. Do you remember anything about the boxes?

A. There was some empty paper boxes.

Q. Were they wooden boxes?

[fol. 209] A. No.

Q. Cardboard boxes?

A. Cardboard boxes; yeah.

Q. About how many cardboard boxes did you put on the little girl?

A. About three or four. That's all I could find.

Q. Can you tell me about that place where the incinera-

tor is where you piled the boxes on the little girl? How much space there is in there?

A. There is not much space. I would say—oh, enough space.

Q. Is there something around in the room here that would indicate how wide the place is?

A. Not too wide. I would say from here to (indicating).

Q. What is that—about four feet maybe?

A. Three and a half—four feet—something like that.

Q. When was the last time the little girl screamed?

A. Oh, she didn't scream at all—just want start to scream.

Q. Where did you go when you got on the street car on Venice?

A. I went to Ocean Park. Had a couple of drinks in a cocktail lounge.

Q. Do you remember how the little girl was dressed when she came over that Monday afternoon?

[fol. 210] A. I think some kind of a checkered dress on. I don't know—really remember how she looked.

Q. Did she have on some pa-ties?

A. Panties, yeah.

Q. What color were her panties, do you remember?

A. If I am not mistaken purple or—no, not white.

Q. They were a color were they, of some kind?

A. Some kind, yeah.

Q. What happened to the girl's little panties?

A. Well, I pull them off.

Q. When did you pull her little panties off?

A. I was in the bedroom when—I pulled out—I pulled—I got hold of the panties. They busted when I pulled her off the bed.

Q. Will you repeat that again? Now take your time, Mr. Stroble, I didn't quite hear it.

A. When I pulled the girl off from the bed, I got a hold of her panties. I couldn't hold her—I was sweating. The body—it was slippery, you know. I got a hold of the panties. One side of the panties busted. Then I used the panties for get another blanket. I was—the water was running down—I was soaking wet.

Q. Now, are you talking about the time, Mr. Stroble, when you were on top of her and she was screaming and fighting and you were worried and you pulled her down on the floor? Is that the time you're talking about?

[fol. 211] A. That is the time, yeah.

Q. When you put her in the blanket?

A. In the blanket, yeah. I pulled her off.

Q. Did you tear her panties before you wrapped her up in the blanket?

A. No, no—I did tear because I have to pull it off, see—off the bed and put her on the blanket. I couldn't get a hold on the flesh on the body because my hand was sweating. I couldn't hold her. Then I got ahold of the panties and one side busted.

Q. When you wrapped her up in that blanket, were her panties still on her?

A. No—no.

Q. You took her panties all the way off, is that right?

A. I pulled her off sometime when I put on the—on the—

Q. Do you remember what you did with her panties when you took—pulled them off of her body?

A. They were laying in the bedroom when I came back.

Q. Was that after you had put the knife in the back of her neck?

A. Before I went to go, I walked through the house and I see that thing laying there, see.

Q. Where was the little girl when you saw the panties in the kids' bedroom?

[fol. 212] A. She was in the back there.

Q. Were the boxes on top of her then?

A. Everything was finished at that time. Then I went—

Q. What did you do with the panties when you saw them on the floor of the bedroom?

A. I saw them laying there and then I went through the back room door and took them to the incinerator.

Q. What did you do that for?

A. Oh, I don't know why. I can't even believe I did that what I did—

Q. When you left the house, did you take your clothes with you?

A. No, because I am no intention of live any longer. It was night. Some minutes I thought—well, I did something, and I don't know if I can take it or not. I think I go out to Ocean Park and have a last night good time and jump over—I went over there and picked out a spot, but I didn't.

Q. Tell me this, Mr. Ströble, did you ever play around with Linda before that?

A. I did, yes.

Q. About how old was Linda when you started playing with her?

A. About five years.

Q. About five years old?

A. I never really played around. I just put her in my [fol. 213] lap and put my hand over her.

Q. Had you ever put your finger up in her before?

A. No, no.

Q. You are sure that this is the first time?

A. First time.

Q. Well, how many times have you put your hands on her legs?

A. Oh, that's pretty near every time I went over there. Played a little bit and she kissed me and I just got hold.

Q. Did you like to put your hands upon her legs?

A. I don't know why.

Q. Well, did you like it?

A. It looks that way.

Q. You'd been doing that for about a year, is that right?

A. That's right.

Q. Would you put your hands on her legs about every time you saw her?

A. Well, when I came over there anyhow, once anyway.

Q. Did you ever go anywhere alone with Linda?

A. No.

Q. Did you ever walk over to the candy store with her?

A. Never alone. There was always her brother or next door her cousin.

Q. Were you ever in an automobile alone with her?

[fol. 214] A. No.

Q. Were you ever in a room alone with her before?

A. Oh, yes, lots of times.

Q. What did you do before that when you were alone with her in a room?

A. I remember when I went to Mexico when I jumped the bond. I don't know exactly the dates—

Q. Take your time. May I make the suggestion, Mr. Stroble; keep your hand down. See the little lady here. If you have your hands up it's hard for her—

A. Oh, I see.

Q. Go ahead now. You were telling us about when you jumped bond and went to Mexico.

A. Yeah. I remember my daughter said they going to make reservations for me in Catalina. I said I didn't think I going to be there. I don't know if they did make a reservation. They go there every year though; stay there a month or so, go fishing. I just went along; went fishing too, see. And this time I was in Mexico and I left and I stayed in the hotel Lito in Tijuana for two months and that was the first time I came back to the United States.

Q. After you jumped bond?

A. Yeah.

Q. Go ahead.

A. I had lots of friends there. I went across the border a half dozen times—about a dozen times, to Mexico City. [fol. 215] I went to National City and some place, a show, oh, I went to Cinquantina. I have lots of friends down there. And that day, it was on a Friday, there was Abe—he runs the hotel there. I stay with him for two months. He took me—he said he got two daughters in, what you call it—San Diego; they go to school near the Mexican border; they go to high school—

Q. Keep your hand down. Now, wait a moment (to stenographer): you read back what you have there and we'll get this straightened out.

(Stenographer reads back last answer.)

A. His name is Abe. I don't know—he is a Russian fellow. He owns a bar down there, very nice fellow, on First Street; they call it the Russian Cocktail Bar. His name is, everybody calls him Abe, see. The hotel is Lito, L-i-t-o.

Q. Well, now, did you meet Linda down there, or what happened?

A. No, then I came over and I stayed—the first night, it was Friday night I stayed in the first—what do you call those places stay over, Motel, first near Abe's house. Abe's car was there and I got in at about ten o'clock in Los Angeles and I meet some officer from the army and we had quite a few drinks in the station and he met some relatives there and from there they say, 'We drive you home.' We had few drinks on the train and we had some more drinks [fol. 216] down there and I think there was two carfulls. I say, 'Why not let's go over to Sunset Strip, what do you call it, The Last Roundup.' And we had some more drinks down there. His mother say, 'O.K. Do you live in Culver City?' I said, 'Right close by.' 'We go there anyway. It is not—right in our way. We live in Lynwood', somewhere, you know. They have a drive near close by, so we went over to El Estrano and we had a drink. I don't know how many. From there we went to Culver City and had a couple of drinks there; from there they drove me home.

Q. About what time did you get home?

A. Oh, it must be about 1:00 o'clock, somewhere around there—

Q. Did you see Linda then?

A. Oh, I think they close up here 2:00 o'clock, don't they? That was—they closed that up, that joint in Culver City. I don't know, pretty big place there. Then from there they drove me over there. I didn't want to wake up son-in-law because he had his car out there; I know he was in the house, see. I went next, to the motel and rent a room.

Q. When did you see the little girl?

A. Then the next morning, I get up about 10:00 o'clock and went over to the house and he was gone, my son-in-law was gone, and I couldn't get in and I unhooked the kitchen screen. It was always open that far I know, and I went to the back porch and crawled in. I make myself [fol. 217] something to eat and not long, about an hour afterwards I went out and walk around and look at the flowers and feed the cat. The dog wasn't there, they took the dog away somewhere over a couple of weeks. There are some neighbors and Mrs. Cinder who look after the cat, She hear me right away and she say, 'I know

you're here. Now I won't have to feed the cat.' I say, 'No, I'll be here a couple of days.' Say, 'Where you been?' I say, 'Been up north.'

Q. When did little Linda come over?

A. That's this coming up. Linda—I walked around outside, looked after the flowers, that's my hobby, I like to work on the garden, the flowers. During the war in Hawaii, I was richer and everything, I was there for eleven months, it was very nice. Anyway, I walked around and finally somebody hollered over, 'Hello, Grandpa.' It was her brother there, what's his name, Richard, and they both come over. 'You've been away so long,' Richard said. I say, 'Only a couple of weeks.'

Q. Let's see. Who came over, the two little girls?

A. No, Richard—that is her brother, and Linda; they both came over and—

Q. Richard and Linda are brother and sister, is that right?

A. Yes, they came over and they said, 'You have been away so long.' I said, 'Not long, two months.' 'Where you [fol. 218] been?' I said, 'I've been up north in San Francisco.' Well, we went around in the yard and then I got so nervous. I thought maybe because Rube told me before I left, he said, 'Don't make any humbug,' he said, 'there is going to be a warrant out if you don't show up in court on the 11th when you're supposed to come.' And this was working my mind. I thought, 'heck, maybe somebody see me and maybe they have a warrant out.'

Q. What happened now when Richard and Linda came over?

A. Well, we played in the yard in the swing.

Q. The three of you?

A. All three, yes, I think Robert, next door cousin, come over too, you know. He's about five years old. Always played together. Richard left afterwards, it was just before eating time. He was away about half an hour and he hollered for Linda 'Come over and eat', and she went over there and I say, 'Come back?' And she said, 'Yes, I be back after I eat.' Then she come back and we played and—

Q. Now, let's see. When you played you were where?

A. In the yard.

Q. Reuben's yard?

A. Yes.

Q. Back yard?

A. In the back yard, yeah.

Q. Who was in the back yard when you were playing?

A. It was Robert, that is her brother, and—Richard [fol. 219] is her brother and Robert is her cousin, the three played there, but Robert went home.

Q. What did you do to Linda in the back yard then?

A. Oh, we just play. She wanted me to swing her.

Q. Did you touch her then?

A. No, I been there for two, pretty near three days and I didn't touch her at all that time.

Q. You say that on Monday, the 14th of November you were alone in the bedroom with Linda. Is that the only time you have been alone in a room with Linda?

A. No, I just told you, I been with Linda pretty near three days that time, from the 3rd of July, Saturday morning. I came Friday night—

Q. Well, did anything happen out of the way during those three days?

A. No.

Q. Didn't touch her at all?

A. Nothing at all; I didn't drink, I didn't do anything that was—until I come back.

Q. Tell me this, Mr. Stroble, is Linda the only little girl you've touched?

A. There is another one in 62—used to live in a court.

Q. What is her first name?

A. Jeanette. Jeanette.

Q. When did you meet Jeanette?

[fol. 220] A. Oh, I lived in the court for a couple of years.

Q. About when was that?

A. Oh, that's about a year and a half ago.

Q. Did you put your finger up side—inside Jeanette?

A. No, not inside.

Q. What did you do with Jeanette?

A. Just the same thing, played around.

Q. Put your hand on her legs?

A. Yes.

Q. Outside of her dress or under the dress?

A. Under.

Q. How far up her legs did you put your hands?

A. Up to the private.

Q. Put your hand underneath Jeanette's little panties?

A. Yes.

Q. Where did you put your hand when you had it underneath little Jeanette's panties? Did you put your finger up inside of it?

A. Not inside, just kept the finger around—

Q. Kept your finger near it, is that right?

A. Yes.

Q. How many times did you do that to Jeanette?

A. Oh, I would say about eight or ten times.

Q. How old is Jeanette?

A. Around five and a half or six.

Q. And what year was that in?

[fol. 221] A. Just about a year and a half ago—two years now because I had been away.

Q. Were you inside a house or outside when you'd do that to Jeanette?

A. Inside.

Q. Whose house?

A. I had an apartment then.

Q. Anybody live with you?

A. No.

[fol. 222] Q. How far did Jeanette live from you?

A. Right in the middle, in a court.

Q. Did you give Jeanette candy?

A. There was always candy there. She wasn't the only one came there. Lots of older girls come there.

Q. Did you ever give Jeanette any money?

A. No.

Q. Ever give her a nickel or dime or anything like that?

A. Christmas I give a dollar to all the kids. There were, let's see, about three other girls come over there. Next door to me is Mr. Cider, he bought the place, he had a daughter and three—two boys and they come over and Jeanette come over every day and some days the two boys used to help me clean up, went over there and cleaned the windows and everything. I said, all right, and I give them two bits, but I never touched them.

Q. You said you put your finger in or near the privates of Linda and Jeanette. Did you ever do that to any of the other little girls?

A. No.

Q. Those are the only two little girls that you have ever put your hands inside their little panties, is that right?

A. Yes.

Q. How about little boys? Have you ever played with [fol. 223] little boys?

A. No.

Q. Never in your life?

A. No. They came over—

Q. Tell me this: Do you like little boys?

A. No, I don't care about them.

Q. Do you like to put your hands on little boys?

A. No.

Q. Do you like to put your hands on little girls? Is that right?

A. Yes.

Q. When did you first get the notion that you like to put your hands on little girls; about how old were you?

A. I don't know. I never start before till I got away from work. I stop and got all kinds of things. I got lost. That is all.

Q. When did you quit working for Van De Kamp's?

A. I went on vacation first of April, '46."

The Court: We will take our noon recess at this time. The jury will keep in mind the admonition, don't talk about the case or form or express any opinion. Take a recess until two o'clock. The jury will return here at two o'clock.

(Whereupon a recess was taken until 2:00 o'clock p. m. of the same day, Friday, December 6, 1950.)

[fol. 224]

Friday, January 6, 1950.

The Court: Let the record show the jury, counsel and the defendant present. You may proceed.

Mr. Alexander: Mr. Brown, will you resume the stand, please?

THAD BROWN, having been previously duly sworn, testified further as follows:

The Witness: (Reading)

Q. Now, about how long after you started your vacation was it that you started to think about fooling around with little girls?

A. Oh, that is about a year; something like that. I got tired of moving pictures and everything.

Q. That would be in about 1948, would it?

A. '48 or '47; '47, I would say.

Q. Who was the first little girl you fooled around with?

A. Jeanette, Jeanette.

Q. How did you happen to do that the first time; can you tell me about it?

A. I will tell you how it happened. She was the only one girl in the court at that time until Mr. Siler bought the place and he had another girl. Jeanette came in and [fol. 225] I was reading my papers on the porch, on the front porch. She came over to talk to me and I said, 'Aren't you go to school?' She said, 'No.' Pretty big girl, cute looking, smart. Well, she came in, stand by the door. That is the way it happened, screen door, it was open. 'Don't open up the screen door. Want to come in or stay out?' 'Can I come in?' I said, 'Sure.' She came in and that happened a couple of days and she came in regular and one day she come in and she layed down on the ecuch there and open up here (illustrating)—pull shirt. I said, 'What did you do that for?' She laughed, you know. Well, then, that was all. She come in the next day again and—

Q. Is that when it started?

A. That's when it started. I didn't touch her.

Q. Say, there's one thing I forgot to ask you about, Mr. Stroble; you told us that when your daughter and your granddaughter left to go to the party on Wilshire on Monday, the 14th of November, that Freddie came up and talked with his mother, is that right?

A. It was outside, the taxi drive—he came there before they drove off.

Q. You said that Freddie didn't come inside the house at all, is that right?

A. Not that I know.

Q. Do you know where Freddie went to?

A. He went on the bike some place, I don't know where. [fol. 226] He went to play football or baseball, kids are playing; he is a pretty good sport, you know.

Q. Was that the last time you saw Freddie?

A. That is the last time. I saw him through the window.

Q. Was Freddie in the house when you were fooling around with the little girl?

A. No, nobody there.

Q. The last time you saw Freddie in your life was when he started away on the bicycle to play football?

A. The last time.

Q. Was there anybody in the house when this was going on?

A. Nobody.

Q. Have you ever been in a hospital in your life?

A. No, not that I know.

Q. Have you been in a hospital of any kind?

A. Only this (indicating finger). When I chopped my finger.

Q. I'm sorry, I didn't understand you.

A. Only had a treatment—I chopped my finger.

Q. When did you hurt your finger?

A. Oh, I was in the hospital.

Q. When was that?

A. It happened—I couldn't really recall. We lived in 50th and Broadway, and I come home from work and have two shopping bags full of food and vegetable and from Grand Central Market. I always buy my stuff there. I [fol. 227] get off the street car right near the car barn. I jumped off and went behind the car and the street car came and struck me. That's where I got my scar here (indicating).

Q. Now, when did that happen?

A. It happened on—

Q. Was it before the war or after the war?

A. Oh, it was before the war.

Q. How long before the war did you have this accident?

A. Let's see. Freddy was about—just let me concentrate.

Q. Take your time.

A. No, Freddie was not alive at that time.

Q. This accident happened before Freddie was born?

A. I think so. It was about 13 or 14 years. They may still have a record of it because—

Q. Did the ambulance come and pick you up?

A. Pick me up; I was unconscious.

Q. How long were you unconscious?

A. I couldn't really say. When I woke up.

Q. Where were you when you came to?

A. In 50—

Q. In the ambulance or on the street or where?

A. No—on the—I was knocked down about 20 feet away from the car. See? The car knocked me down this way, but when I came to myself I saw a batch of blood there; [fol. 228] blood was running down.

Q. Were you on the pavement?

A. No, I think they took me off the pavement. I think they put me on the grass.

Q. You were right at the place you were hit though?

A. I think so, because they are not supposed to move anybody.

Q. You say the ambulance came?

A. When the ambulance came I saw so many people around, you know. Then I look—I just kind a know—there was so much blood there. Blood was coming down like a store.

Q. What hospital did you go to?

A. General Hospital.

Q. How long were you at General?

A. Well, I couldn't really say—I think I paid \$28.00.

Q. Week, or month—

A. Must be longer than that because I paid \$28.00. My wife came in.

Q. Do you have any idea how long you were over there?

A. I imagine about two weeks or something like that.

Q. Do you remember who your doctor was?

A. No, I couldn't really say.

Q. What happened to your head in this accident?

A. Well, he sewed it up. They took me down to, what you call it?

Q. Receiving Hospital?

A. Receiving Hospital, yes.

[fol. 229] Q. Did you have any other injuries?

A. Not that I know of.

Q. Did you recover from that all right?

A. I think so.

Q. Did you have any dizzy spells after that?

A. No, I couldn't really say.

Q. Did you ever pass out on the street or anything like that?

A. No.

Q. You seemed to have good balance; you weren't trembling or anything like that say a year later?

A. No, no; that is, I don't think it affect me very much. I didn't think so.

Q. Now, did you go back to work after you had that accident?

A. Yes.

Q. Were you able to do your work all right?

A. Yes.

Q. Were you able to do your work as well after the accident as before the accident?

A. Well, I hope so. I always think I did what I could.

Q. Did the boss ever say to you after the accident, 'You are no good since you have been in the street car accident'?

A. No.

[fol. 230] Q. How long did you work for Van de Kamp after you had that accident?

A. Oh, I imagine about—it was in the old place, I would say about ten years, something like that.

Q. What sort of work were you doing during those ten years?

A. Oh, I was a foreman, what they call a cookie foreman for a certain time, then they put me as pie department—

Q. Pie department?

A. I was foreman there.

Q. Foreman of the pie department?

A. Yes, and they put me, had some trouble in the cake department. I was always conscientious, and hard worker.

Q. How much money did you make after the accident, a week?

A. Oh, some—about 50.

Q. Is that good pay for those days?

A. At that time very good pay.

Q. As far as you know, did that accident have any effect at all on you?

A. Well, I couldn't really say, I don't think so.

Q. Memory good after the accident?

A. Well, there's—I wouldn't say that, lately I really—
[fol. 231] Q. You say lately; when do you mean?

A. Since I got away from the shop I don't—I'm really not what I used to be.

Q. Up until the time you took your vacation, though, your memory was just as good as it ever had been, is that right?

A. Yes, just as good. Oh, since, after that I got haywire, I drink too much, I did things that I have never done, never would do.

Q. Had you ever been in any other accident?

A. Oh, yes, I was in an automobile accident.

Q. When did that happen?

A. I think it was about two years after, right near the plant.

Q. That would be about ten years ago?

A. Yes, something like that.

Q. Did you go to the hospital after the automobile accident?

A. They picked me up, I got out of the saloon, all the boys from Van de Kamp's, we had been drinking there, a little place called the Black Dog, it isn't there any more, it's closed up, not there any more, we had some drinks, we walked out, it was pretty dark, went across the street in a friend of mine's car, the car wouldn't start, got in the car and the other one, they say the other one run over, and they thought I had two broken legs. I didn't have
[fol. 232] the—a little bit on the side and I was—

Q. The only injury you had in the automobile accident was to your right ankle?

A. That was all.

Q. Did you have any head injuries at all in that automobile accident?

A. Nothing at all.

Q. Did you spend any time in the hospital as a result of that automobile accident?

A. Well, I was in the hospital for a couple of weeks, had the thing on, what you call it, bandage.

Q. Have you had any other accidents, Mr. Stroble?

A. No, that's all.

Q. How long has it been since you have been to a doctor?

A. I don't—I never go to a doctor.

Q. Is it true that the last time you went to a doctor was when you had the automobile accident?

A. That's—that was the last time I know.

Q. You never have fainting spells or fits, or anything like that, do you?

A. No, nothing like that.

Q. Have you ever been in a mental institution?

A. No.

Q. Have you ever been examined by a doctor for mental trouble of any kind?

[fol. 233] A. Well, that fellow, you know, on Wilshire, what do you call him, when it happened, John Gray sent me over to him and Dr. Max—he give me shots.

Q. When was that?

A. Oh, that happened right after—before I skipped bond.

Q. You're talking about Dr. DeRiver?

A. No, that's a different doctor.

Q. Well, did you go to this doctor after you got in trouble?

A. Yeah.

Q. In the case in which you jumped bond?

A. Before I jumped bond.

Q. Do you know the name of that doctor?

A. Max—

Q. Is it Dr. —

A. I can't read without glasses.

Q. Marxer?

A. Marxer.

Q. How many times did you go to Dr. Marxer?

A. About five times.

Q. What did he do to you?

A. He talked to me, asked me questions and afterwards he gave me shots; not him, the nurse.

Q. What kind of shots?

A. Oh, I don't know what you call them.

[fol. 234] Q. Know the name of them?

A. One time here, and one time here, next time here again, and—(indicating both arms).

Q. Who sent you to Dr. Marxer?

A. I couldn't—John, Attorney John Gray.

Q. And isn't it true that Attorney Gray sent you to Dr. Marxer after you got in that first trouble?

A. Yes.

Q. I'm talking about the case in which you jumped bail.

A. Yeah.

Q. Mr. Gray told you that perhaps Mr.—Dr. Marxer could help you in liking little girls, is that right?

A. That's what he said.

Q. Now, can you remember any other doctors you have ever been to?

A. No, that's all.

Q. You haven't got syphilis?

A. No.

Q. Do you remember pretty well everything that happened here in the last month?

A. I tried to remember.

Q. Did you feel that you were doing wrong when you killed this little Linda?

A. I can't even believe that I did it.

Q. Was that wrong?

[fol. 235] A. I couldn't do anything worse than that.

Q. Why was it wrong for you to kill that little girl?

A. I don't know why I did it. I don't—I like to ask myself—I don't realize why I did it. I couldn't understand, I liked the little girl very much. Something—only I really like her; she was really sweet.

Q. Did you have any reason to kill her?

A. There was no reason. I don't know—

Q. Do you think it was a sin to kill her?

A. There is no name for it.

Q. At the time you killed that little girl, did you know it was against the law to kill her?

A. I know, as soon as it happened; I just was ready to commit suicide.

Q. Why did you want to commit suicide?

A. Well, there's nothing to live for no more.

Q. Why isn't there anything to live for?

A. Anything that happened like that, human doesn't have no right to live.

Q. You feel that a man that kills a little girl as you did should die for it, is that what you think?

A. I think if I killed myself, I not get away from it. I not get away from the punishment, I get on the other side, might as well face on this side, whatever is coming.

Q. Where have you been living since you left your [fol. 236] daughter's home on Monday, the 14th of November?

A. I've been living in Ocean Park.

Q. Where is Ocean Park?

A. I rent a room about—oh, I think about 8:30, right from—across from that fence, what do you call that, Ocean—Casino or whatever they call it.

Q. Know what street it's on?

A. When you go out on Ocean Park it's the last, a wide space, I think—some of them play out there, concession, some kind of amusement there.

Q. What did you do? Have a room?

A. Have a room.

Q. In a hotel?

A. They call it a rooming house.

Q. What's the name of the rooming house?

A. I forget.

Q. Is that the first time you ever been there?

A. First time I have, never been there before.

Q. Did you live in that room from the time you left your daughter's home up until the time you were arrested?

A. Yes.

Q. Have you got any clothes in that room now?

A. No, nothing.

Q. Have you got a toothbrush in that room now?

A. No, I left it over in the house, I took the thing along; what you call—Gillett- razor. I though maybe I need it, [fol. 237] maybe don't need it.

Q. Where's your razor now?

A. They got it there.

Q. What have you been doing since you left your daughter's home?

A. I went in Ocean Park, walk up and down, went in saloons, have some drinks, meet people, talk to people. I didn't even go to a show, didn't feel like going to a show.

Q. Have you met any little girls since you left your daughter's house?

A. No.

Q. Been alone with any little girls since you left your daughter's house?

A. No, I had enough, I guess.

Q. Anything you want to tell me?

A. (No answer.)

Q. Did you register at this rooming house?

A. Yeah, but not in my name.

Q. What name did you use?

A. I don't know—I think it's—just a minute. I think I met that fellow somewhere. He gave me a card. I think he lives out in—near Bundy. I put his address on.

Q. You remember the first name you used?

A. Frank G. Huff.

[fol. 238] Q. How do you spell that last name?

A. H-o-f-f.

Q. Why did you use the name of Frank G. Hoff when you registered at the rooming house?

A. Well, I am not sure; if I gave my right name, I wouldn't be there two hours.

Q. What do you think would have happened within two hours if you used your right name on the register?

A. Stay over night and maybe tomorrow I gonna give myself up or gonna jump in the ocean.

Q. Who did you think would pick you up?

A. The law.

Q. Why did you think the law would pick you up?

A. Supposed to.

Q. Why was the law supposed to?

A. Anybody like me supposed to be not free.

Q. Did you think the law should pick you up because you killed the little girl? A

A. Absolutely. I want to give myself up this afternoon. That is why I went downtown. I wanted to call up my daughter and then Van de Kamp and the police department.

Q. Did you call up Mr. Gray since you left Monday?

A. No.

Q. How about your daughter?

A. I called nobody up. I want to do it this afternoon.

[fol. 239] Q. Have you been reading the paper?

A. I read every bit of it.

Q. Read the Times?

A. Well, the first paper I got a hold of was the Mirror. That came out. I passed by the news stand in Ocean Park, oh, I think about in the morning some time, if I am not mistaken.

Q. What would be what morning?

A. It would be Tuesday morning.

[fol. 240] Q. What did the Mirror say?

A. Oh, there was a big thing out about a girl, six year old got killed. They had my name there and after, one paper after the other came out. I got a hold of the Examiner, later on. Then I got another paper; it was the Herald, and each one has a different setup.

Q. How many papers would you read every day?

A. First I read about three of them. The second, I only read two, because I always relaxing, but I don't understand. I walked around so freely. I didn't care. The sooner they would pick me up I think the better it would be for me. This way, I walk around a bit. I didn't, couldn't enjoy nothing, just walk around more dazed in my mind than in my life, because my mind was really more—I like to do it myself and do away it with myself.

Q. You feel bad because you killed this little girl?

A. I feel bad. I couldn't even—I couldn't even—

Q. Is it on your conscience?

A. I couldn't—I couldn't even believe I did it. I don't believe it. I would care—

Q. Now, when you read that Mirror on Tuesday morning, what did you think about that?

A. I think it was one of the hardest thing I ever read, you know—be me. I couldn't really express myself.

Q. When were you arrested?

[fol. 241] A. Oh, this afternoon, when I—I got up about 10:00 o'clock.

Q. About what time were you arrested?

A. I came down—I would say twelve, after twelve, no—ten, eleven—oh, I would say about 12:00 o'clock, something like that.

Q. Who arrested you?

A. That fellow (indicating Officer Carlson).

Q. Is that the man that arrested you?

A. Yes, he came in before I give myself—

Q. Your name is Carlson (Directed to officer). Was Mr. Carlson alone when he arrested you?

A. No, there was somebody else with the gentleman. I think that gentleman pointed out that was me across the street. I even saw the fellow follow me.

Q. Now this other gentleman that was with Mr. Carlson, is he a police officer or a citizen?

A. I don't know. I think he was a citizen. Was he?

Q. What did Mr. Carlson say to you when he came up to you?

A. I had a glass of beer. I thought to myself, this is the last drink then I go over and telephone. When I go into the subway station they have so many telephones. I call up my daughter, or son-in-law's office or Van de Kamp, have it all over and then call up the Police Department.

Q. What did Mr. Carlson say when he came up to you?

A. Well, I still had a half glass of beer left. Then he [fol. 242] came up and said, 'Let's go.' It was not surprise. It was not a shock to me because I expected it any second.

Q. Where did Officer Carlson take you?

A. Oh, down to that park there.

Q. Down to the park?

A. Park, yeah. What do you call the park there?

Q. Pershing Square?

A. Pershing Square.

Q. Did you meet another officer down at Pershing Square?

A. I don't know he was officer or not.

Q. What happened at Pershing Square?

A. Well, they took my belonging and that was all.

Q. How did Officer Carlson treat you?

A. I didn't get that.

Q. How did Officer Carlson treat you?

A. Well, I think he treat me all right.

Q. Was he rough with you at all?

A. No, I couldn't say.

Q. Did he turn you over to some other officers?

A. I don't really—

Q. How did you get from the park up to the police station?

A. He was on the phone, call up. I think some officers came down with him.

Q. Were some in a police car?

[fol. 243] A. I don't know it was a police car or not. I think it was just, what you call them?

Q. Did you ride from Pershing Square to the police station in a car?

A. Yeah.

Q. How many officers were in the car with you?

A. Two in front and that gentleman with me. I think that was only four of us.

Q. Did any of those four men mistreat you?

A. Not that I know.

Q. What happened to you when you got to the police station?

A. We just walk in and there—was on Wilshire. That's all. We stopped there.

Q. Then did you come down here?

A. Came down here."

Mr. Matthews: What was that last answer?

A. "A. Come down here."

Mr. Matthews: All right.

Q. How did you come down here, in a car?

A. Yeah, with gentlemen here.

Q. How many were there in the car with you from the Wilshire Station to this building?

A. One more.

Q. Did any of those officers abuse you?

A. Not as far as I know.

[fol. 244] Q. Since you have been arrested has anybody hit you?

A. No.

Q. Has anybody slapped you?

A. No.

Q. Anybody kicked you?

A. (Shakes head in the negative.)

Q. Anybody threatened to hit you?

A. No, not what I know.

Q. Anybody threaten to slap you?

A. (Shakes head in the negative.)

Q. Anybody threaten to mistreat you in any way?

A. Not what I know.

Q. Has anybody promised you anything?

A. No.

Q. How have I treated you?

A. I couldn't express myself. How people can do like that, you know. It's just—imaginable.

Q. Well, have I mistreated you in any way?

A. No.

Q. How have I been to you?

A. Hundred per cent. I would say a thousand per cent.

Q. Have you got any complaints at all the way the officers have treated you?

A. No, nothing at all. Wonderful.

Q. Have you told me about this case freely and voluntarily?

[fol. 245] A. Everything what is. Nothing I go back. I want to give myself up anyway, but I was ready for the jump over; then I thought I cannot get away from punishment, because I paid the other side. Might as well as pay here too. That was my opinion. That is why I come down.

Q. Is everything you told me the truth?"

Now, the typing here is, "Except what I told you," and I checked with the recorder and it is, "Exactly what I told you."

By Mr. Alexander:

Q. While Fred is there, I'd like to ask you a couple of questions, Mr. Stroble. Mr. Stroble, in that room where you had Linda on the bed, how many beds are there in that room?

A. Two—single beds.

Q. Who sleeps on those single beds?

A. Chella on the left and Freddie on the right.

Q. In which bed did you have Linda? On Freddie's bed?

A. Freddie's bed.

Q. Freddie's bed, is that right?

A. Yeah.

Q. Now, was there this Indian blanket on one bed or two of those beds?

A. That was on Freddie's bed.

Q. The blanket you wrapped Linda—

A. Yeah.

Q. Up was—

[fol 246] A. Yeah.

Q. In Freddie's room?

A. Folded up, I don't know, on the feet.

Q. At the foot of the bed?

A. Yeah.

Q. When you did this, what clothes were you wearing?

A. This suit.

Q. The suit you are wearing now?

A. Yeah; that shirt.

Q. That shirt?

A. Yeah.

Q. Same shoes?

A. Yeah.

Q. Same socks?

A. Yeah.

Q. You told us that you first started to choke Linda—remember that?

A. As soon as she tried to scream. Then, I was—was upset, you know.

Q. When you choked her, were your thumbs in the front of her neck or in the back?

A. Oh, no, right in the front.

Q. Your thumbs, were they pressing into her neck?

A. Yes.

Q. You know what the windpipe is?

A. (Nods.) Yeah.

[fol. 247] Q. You had one thumb on each side of the windpipe, is that what you mean?

A. That's right.

Q. You remember when Sylvia left the house with Chella to go to this party, did Sylvia say something to you about potatoes?

A. Yeah, she said get ready and I put the lamb on at 4:30. I'm gonna call you up and put the fire on the potatoes and when I come back they'll be done and make mashed potatoes and we wouldn't have to wait.

Q. She told you she would call you at 4:30?

A. At 4:30, yeah.

Q. While you were in that house, did the telephone ring?

A. No; I went out of the house—oh,—about 4:00 o'clock—something like that. I have been out there since.

Q. You had left the house before Sylvia called you?

A. I don't know, I don't know, I think so.

Q. You didn't hear the telephone ring?

A. No, I didn't hear the telephone.

Q. And you didn't answer any telephone there?

A. No.

Q. That's all I have."

Mr. Alexander: Chief Brown, your Honor, may I interrupt and ask the Chief a few questions?

The Court: All right.

By Mr. Alexander:

Q. Up to this time, Chief Brown, was the defendant [fol. 248] Stroble shown any of the exhibits that have been in this court such as the blanket, the axe, the hammer, the knife, the ice pick, or the tie?

A. He had not been up to that time. They were brought in at that time from the Wilshire Detective Bureau.

Q. They were brought in to where this defendant was; is that right?

A. That is correct.

Mr. Alexander: All right; now resume reading.

A. The next question is by Mr. Henderson:

“Q. Now, Mr. Stroble, I have a blanket here and I want you to take a look at it, I’ll unwrap it here for you. What blanket is that?”

A. That is the blanket.

Q. What did you do with this blanket on Monday, November the 14th?

A. Laid it on the floor and put Rochelle on there and covered her up.

Q. Put who?

A. Put Linda on there, and covered her up.

Q. Is this the blanket you got off of Freddy’s bed?

A. Yeah.

Q. You recognize the color of this blanket?

A. Yeah.

Q. What kind of a blanket is this?

A. I would call it an Indian.

[fol. 249] Q. Now, this looks like a little girl’s torn dress.”

Mr. Alexander: Now, Mr. Brown, Mr. Henderson was speaking to you about a blanket; is this the blanket, People’s Exhibit 3 that was shown to the defendant at that time?

A. That is the blanket.

The last question:

“Q. Now, this looks like a little girl’s torn dress.

A. It couldn’t be torn because I didn’t—

Q. Cut, I mean to say. Do you recognize this dress?

A. Yes.

Q. When did you see this dress last?

A. When she was out—when I took her out, in the garage, out—out in the back yard.

Q. Who had this dress on then?

A. Linda.

Q. Is this the dress that Linda had when she came over to—

A. I’m positive.

Q. The house?

A. I'm positive.

Q. Did you put the cuts in it?

A. No, that I know of.

Q. Is this dress the right color?

A. Color.

Q. Now, here are two red shoes."

[fol. 250] Mr. Alexander: Before you come to the shoes, Chief Brown, directing your attention to this dress; People's Exhibit 19, is this the dress that was shown the defendant at that time (indicating)?

A. It is the dress.

Mr. Hill: If your Honor please, in order to expedite the matter, we will stipulate that wherever objects are referred to in the conversation now being related by Chief Brown, that they refer to the objects which have been correspondingly marked in this case for identification.

Mr. Alexander: Of course, the trouble is I don't think the number will appear in the record if we do it that way, your Honor.

The Court: Well, they have all gone in with descriptive words, such as blanket, necktie and so forth, and I see now no duplication, there doesn't seem to be any two of them of one kind, so there could not be any confusion.

Mr. Alexander: That is correct, your Honor. Very well; with that stipulation we won't interrupt the Chief on these exhibits.

A. The last part of that last question was:

"Do you recognize those shoes?"

A. I think she had them on.

Q. Who had these shoes on?

A. I think Linda.

Q. What color are those shoes?

[fol. 251] A. Red.

Q. Did Linda have red shoes on when she came over Monday?

A. I couldn't really say, but I think those are Linda's shoes. I think she had red shoes on.

Q. If you don't really remember don't tell me.

A. No, I don't really know.

Q. Did she have on low shoes?

A. She did have low shoes on.

Q. Here is an ice pick, do you want to take a hold of this?

A. No.

Q. Did you ever see that ice pick before?

A. It's what I took out of the kitchen, *kitchen*.

Q. Is this the ice pick that you pushed into Linda's body near her heart?

A. Yes.

Q. I think it was once in front and twice in her back, is that right?

A. I think so.

Q. Is that the right color handle?

A. Yes.

Q. The right length?

A. Yes, sir.

Q. Look at the point on that ice pick.

A. It's not sharp.

[fol. 252] Q. The same point as the point you had on the ice pick you used on Linda?

A. The same.

Q. Take a look at this necktie, have you seen that before?

A. I think that is the necktie what I took off from the dresser on the side.

Q. Is this the necktie that you got from the rack in the kid's bedroom?

A. Yes.

Q. Is this the necktie that you wrapped around Linda's throat?

A. Yes.

Q. This is the necktie you strangled her with?

A. Yes.

[fol. 253] Q. Right color, is it?

A. Yes.

Q. Right kind of material?

A. Yes.

Q. What kind of material is this necktie?

A. Some kind of woven, I would say really.

Q. That is the right kind of material though, isn't it?

A. Yes, sir.

Q. Do you know who this necktie belonged to?

A. No.

Q. You got it in Freddy's room though, didn't you?

A. Yes, right on the side near the bed.

Q. Have you ever seen this knife before?

A. That's the one that—

Q. Is that the knife you got out of the drawer of the kitchen in your daughter's home?

A. Yes.

Q. Is this the knife that you got after you remembered how they killed the bulls in the bull ring?

A. That came in my mind that's because I couldn't see her suffer, you know, I did everything to make it as quick as possible to get it over with.

Q. Where did you put this knife after you used it?

A. I think I throw it right near the incinerator, I don't think I put it away anywhere.

[fol. 254] Q. Is that knife the right length?

A. Yes.

Q. The blade the right width?

A. Yes.

Q. The handle the right color?

A. Yes.

Q. Have you seen this axe before?

A. Yes.

Q. Whose axe is this?

A. It belongs to my son-in-law.

Q. Is this the axe that was in the garage on Monday?

A. Yes.

Q. Is this the axe you hit Linda with?

A. Yes.

Q. You hit her with the side part of the axe, is that right?

A. No, no, this side.

Q. Put your finger on the part.

A. There

Q. You call that the side?

A. No, the back I would call it, I don't know, that is why I used (indicating butt).

Q. This is the butt?

A. This is the front, this the back, and this is the side.

Q. Can you tell me which part of the axe you hit the [fol. 255] kid with?

A. This one.

Q. The butt end, is that right?

A. Yes.

Q. Is that handle the right color?

A. Yes.

Q. The handle the right length?

A. Yes.

Q. Have you got anything you want to say?

A. Well, I got in trouble in Honolulu one time in '36 when I went out there. I took my daughter out there, no, not in '36, in '41, during the war. I didn't work, I got in trouble that day again with a girl out there, school teacher caught me.

Q. What did you do to that girl?

A. She came over, she had rabbits and chickens and I just fooled around, she went home and told her mother and she reported it to the police and the fellow came over and asked, my daughter, but my daughter didn't know who it was and then he hollered from the street. He said, 'Is Mr. Stroble in?' and she said 'Yes.' He said, 'Tell him to come out, I want to see him.' So I went down to the car and he said, 'Here's a warrant for you.' He said, 'Do you know the neighbors and the schoolteacher' and I said no. He said, 'Do you know the girl' and I said yes. 'She said she has a charge that it was nothing serious or it [fol. 256] might be serious, but I want to talk with you about it.'

Q. How old was that girl?

A. About nine years old.

Q. Do you know her name?

A. No.

Q. Did you have your hands on her?

A. No, just outside the skirt?

Q. You had your hands outside of her dress?

A. Inside of her dress.

Q. Outside of her panties?

A. Yeah, outside of her panties.

Q. Did you have your hands under her dress but outside of her panties on her privates working your fingers around?

A. Yes, working my fingers around. It happened too when I had nothing to do.

Q. By the way, do you know a little girl by the name of Susan Marks?

A. Yeah, I forgot about that, that is a long—

Q. How old is Susan?

A. I imagine about nine, eight or nine.

Q. When did you know Susan?

A. Oh, I imagine that's about a year ago.

Q. Where were you living when you knew Susan?

A. I came over to my son-in-law's house.

Q. Did Susan live near your son-in-law's house?

[fol. 257] A. I would say about a block further down. Here is Marinda; here is a block around; and then on the right side is Susan's house.

Q. How did you happen to get acquainted with Susan?

A. She came over.

Q. How often would you see Susan?

A. Two or three times.

Q. What did you do with Susan?

A. We wrestled around and fool around.

Q. Were you in the house or out in the yard?

A. Out in the yard or in the house.

Q. Were you alone in the house with her?

A. No. It was Linda there and Chella.

Q. Were you alone with her in the bedroom?

A. No.

Q. What did you do to Susan?

A. Oh, I was in the kitchen and fooling around. She is much bigger girl; she about—must weigh about 80 pounds, at least.

Q. Did you put your hands on Susan?

A. Yes.

Q. Where?

A. Underneath her dress.

Q. Inside or outside her panties?

A. Outside her panties.

Q. Put your hands near her privates?

[fol. 258] A. Yes.

Q. What did you do when you had your hands near her privates?

A. I just try to tickle her.

Q. Wiggle your finger around?

A. Yes.

Q. Did you put your fingers actually inside of her?

A. No.

Q. How many times did you do that to Susan?

A. Oh, about two or three times.

Q. What did Susan say about it?

A. She didn't like it. She didn't say nothing. She said, 'I don't think I will be here any more.' She came over there a couple of days. I said 'Why?' 'I got a nice girl friend near my house and I think I will go over there.' And a couple of weeks after I asked Chella, I said, 'How come Susan don't come over no more?' Chella said, 'She is mad at you.' 'Why?' She said, 'You were talking dirty to her.' I didn't talk—

Q. Did you give Susan any candy?

A. They all had—there was always candy there.

Q. Did you give her some money?

A. No—the kids got money.

Q. Did you ever kill anybody else?

A. My God, no. It is bad enough as it is.

Q. Did you ever get rough with any of these little
[fol. 259] girls?

A. Never, never.

Q. Slap them around?

A. No, I couldn't.

Q. Did you ever bite them or anything like that?

A. No, no. I like them, but not mistreat them.

Q. Mr. Stroble, when you were alone with little Linda in the bedroom, and she was kinda screaming and wrestling around, did you think about the fact that she might tell her mother what had happened?

A. (Nods in affirmative.)

Q. Tell me about that.

A. That is what I was afraid of, I never had any difficulty with her. She always was so nice. I put my hand on her and she never said a word. Sometimes maybe smile, and when this happened, you know, it is—it is, she was so different.

Q. Seemed to be real angry about it?

A. Yes, she was so different and I knew I was up against it even if I let her go, I wouldn't be out of the house and have the whole neighborhood after me, so.

Q. Did you figure that if you let her go home in that frame of mind that she would tell on you?

A. Absolutely.

Q. What did you figure would happen—if she told on you?

[fol. 260] A. Anything, you know. They would come over or I would be hunted like they did and all. You know it is—

Q. Figure you would be in a lot of trouble with the policemen?

A. Absolutely.

Q. You figure if that child went home and told her mother there would be a cop over for you right away? Is that what you had in mind?

A. Before I would know it.

Q. Is that what was in your mind?

A. Yes.

Q. And you were thinking about that before you put her little throat between your hands, isn't that right?

A. I can't believe it.

Q. That's right, isn't it?

A. I can't even believe it.

Q. Well,—

A. Seems to me it's my nature. I see a little girl that I like, I like to play with her, you know. I wouldn't like to do any harm. That's one thing I would never do. How this happened, I don't know.

Q. You were afraid you'd get in trouble, isn't that about it? That's part of it?

A. That's most of it."

That completed the statement which was concluded at [fol. 261] approximately three o'clock. There were several rest periods and interruptions during the taking of it when the defendant was asked if he wanted a drink of water or a cigarette.

Mr. Alexander: Cross-examine.

Cross-examination.

By Mr. Matthews:

Q. Mr. Brown, you say it was concluded at approximately three o'clock. Do you remember when it was started, this statement?

A. What time?

Q. Do you remember when it started, yes, sir?

A. Yes, at approximately one, I think about 12:58.

Q. 12:58. When you arrived at the District Attorney's office, was Fred Stroble already there?

A. No, sir.

Q. You arrived there before he came in?

A. Approximately fifteen minutes prior to his arrival.

Q. What time did you arrive?

A. About a quarter of one.

Q. And thereafter he was brought in, was he?

A. He was.

Q. Now, where was this questioning held down there in the District Attorney's office?

A. In Mr. Simpson's own office.

[fol. 262] Q. And you have related that there were 19 peace officers and deputy district attorneys and the District Attorney there?

A. Yes, sir.

Q. And investigators. Where was Mr. Stroble in that room?

A. Seated to the right of Mr. Simpson who was seated behind his large desk with the microphone with a recorder between Mr. Simpson and Mr. Stroble. The stenographic girls who took the stenographic notes were on Mr. Stroble's right and immediately to the right of them was Mr. Henderson.

Q. Was Mr. Alexander there?

A. Mr. Alexander I believe was seated close to Mr. Henderson.

Q. Did you hear any of these men ask the defendant whether he had an attorney?

A. No, I don't—no, I did not.

Q. Did you hear any of these men ask the defendant whether he wanted an attorney?

A. No, I did not.

Q. Now, Mr. Brown, I believe that the transcript that you have given us by voice here—there was other conversation, but not by way of direct questioning—I mean there were breaks in the confession, weren't there?

A. Yes, Mr. Matthews, there were several breaks, to [fol. 263] give the defendant an opportunity to rest, and also the stenographers who were on the case, and when a change of stenographers would be made he was asked several times if he desired to rest before there were questioning; there were several of those breaks.

Q. Then you discovered while the stenographers took the break with the attorneys that the wire recording had gone right on, is that right?

A. Of course, there was a break also at the time the wire spools were changed on the recorder, but at no time did I hear any questioning concerning the case during these breaks.

Q. Did you see the wire recorder?

A. Yes.

Q. Well then, the wire recorder that was used, is that the wire recorder that was used, that is on the table here, counsel table?

A. It is identical; if it is not the same one it is a similar type.

Q. As the one that Mr. Simpson had on his desk?

A. Yes.

Q. Was there any other microphone but the microphone that connected with this machine in there, were there two microphones or one?

A. That I don't know. There was a concealed microphone directly in front of the defendant.

[fol. 264] Q. I see. They do have a recording room downstairs, did they not, or do you know that of your own knowledge?

Mr. Alexander: I will object to this as not proper cross-examination.

The Court: Mr. Matthews dropped his voice. I didn't get all of it. May I have the question again?

Mr. Matthews: Your Honor, I withdraw the question.

I agree with Mr. Alexander, it is not proper cross-examination.

Q. Mr. Brown, did you see an attorney by the name of John Gray that afternoon?

Mr. Alexander: To which we will object as immaterial.

The Court: It may be preliminary. I will permit a "Yes" or "No" answer to it.

A. Not to my knowledge. I have heard of Mr. Gray. I have never met the gentleman. The first time I recall seeing him was in this courtroom.

By Mr. Matthews:

Q. So far as you remember, you personally did not see Mr. Gray there?

A. No, I do not recall seeing Mr. Gray there.

Mr. Matthews: No further questions.

Mr. Alexander: That is all, Mr. Brown.

The Court: We will take our afternoon recess, ladies and gentlemen of the jury. Please keep in mind the admonition, don't talk about the case, nor form or express any opinion. Take a short recess.

(Recess.)

[fol. 265] (After recess:)

The Court: Let the record show the jury, counsel and defendant present.

Mr. Hill: May it please the Court, with reference to the testimony offered this morning of Mr. Arnold W. Miller, it is stipulated at this time that that testimony may be deemed in the record for all purposes and not just for the limited purpose for which it was offered this morning.

Mr. Alexander: That is so stipulated.

The Court: That will save some time, probably, thank you, gentlemen.

DAVID E. BROWNSON, called as a witness on behalf of the People, being first duly sworn, testified as follows:

[fol. 266] Direct examination.

By Mr. Henderson:

Q. What is your occupation, Mr. Brownson?

A. Radio technician investigator for the District Attorney, Los Angeles County.

Q. In a general way, how much experience have you had in that type of work?

A. I did the same type of work all throughout the war for the O. S. S. and I have been employed by the District Attorney in this capacity for over two years. I have been a commercial radio operator in broadcast stations.

Q. Do you have some recording machinery set up in this court room?

A. I do.

Q. Will you describe that equipment for us?

A. There is a Webster Model 80 wire recorder and playback. There is a power amplifier to amplify it to a greater extent and there are two speakers.

Q. Mr. Brownson, were you in the office of District Attorney Simpson on the afternoon of the 17th of November of last year?

A. I was.

Q. Were you there during the time that a statement was taken from Mr. Stroble?

A. I was.

Q. During the entire time that that statement was taken, [fol. 267] was there any equipment set up in Mr. Simpson's office?

A. There was.

Q. Will you describe it?

A. There was a Webster Model 180 wire recorder which is permanently installed in Mr. Simpson's office.

Q. Was there a mike in Mr. Simpson's office?

A. Yes, sir.

Q. Where was that placed?

A. That was placed right in front of Mr. Stroble.

Q. What, if anything, would the machine in Mr. Simpson's office do that afternoon when it was in operation?

A. It would record all of the conversation of Mr. Ströble and those who questioned him.

Q. As I understand it, Mr. Brownson, there were approximately 19 people present in the room when the statement was made by Mr. Stroble; is that right?

A. That is correct.

Q. Was the machine in operation at the time that Mr. Stroble entered the room?

A. It was.

Q. When in point of time in relation to Mr. Stroble's entry into the office did you start the machine?

A. I started the machine at 12:50 and Mr. Stroble entered the office approximately five minutes later.

Q. As I understand it then, the machine was actually in operation five minutes before Mr. Stroble entered the [fol. 268] office?

A. That is right.

Q. And about when did you stop the machine?

A. At about one minute after 3:00 that afternoon.

Q. At that time had the statement been concluded?

A. It had.

Q. Now, was the machine in continuous operation from the time you first started it until the time that you have indicated that you stopped it?

A. With the exception of about five short breaks, yes, sir.

Q. Do you have any notes, Mr. Brownson, which will enable you to tell us when those breaks occurred and their duration and the cause of the break?

A. I do.

Q. Will you, if necessary, will you use your notes to refresh your recollection so that you can give us an accurate account of those breaks?

A. Yes.

Q. May he refer to those notes, your Honor?

The Court: Yes.

Mr. Hill: May I see them?

Mr. Henderson: Yes, certainly.

Mr. Matthews: Is this what you call a log, Mr. Brownson?

The Witness: Which one have you got?

[fol. 269] Mr. Henderson: Don't tell me you were in the Navy too, Mr. Matthews. Do you want to mark this for identification, your Honor?

The Court: Well, the document now referred to by the witness may be marked 46 for identification.

The Witness: This note, or notes, are a little chart I made up of the breaks in the recording between 12:50 and 3:01.

By Mr. Henderson:

Q. When did you prepare that chart?

A. I believe it was day before yesterday in my lab.

Q. And by using those notes can you refresh your recollection as to the subjects I have mentioned?

A. Yes.

Q. Will you do that, please?

A. The first break occurred about a five second duration, approximately 50 minutes after the machine had been started and that was in changing reels from reel number 1 to reel number 2. There was an approximate two second break in the middle of reel number 2 that was caused by the wire breaking at a later date and being respliced and there are a half a dozen words that have been eliminated because of that break. At about 2:30 p. m. which was the time the second reel ended, there was a five second break for the changing from reel 2 to reel 3. At approximately 2:49 p. m. in the middle of the third reel there is a three second break which was caused by a failure of the original [fol. 270] recording equipment. About 2:55 p. m. there was a five minute break that was caused because another person thought that the machine should be turned off and I turned it on again in about five minutes.

Q. Now, do you know who the person was that turned the machine off?

A. I do.

Q. Who was it?

A. Mr. William Simpson.

Q. At the time Mr. Simpson turned the machine off had I completed my questions?

A. You had.

Q. Of Mr. Stroble?

A. You had.

Q. And what if anything occasioned you to start the machine in operation again about five minutes later?

A. Because Mr. Stroble was still sitting there and there was a conversation which did not pertain to the questions between Mr. Stroble and Mr. Alexander. It was in the nature of a personal conversation.

Q. Now, if you were to play the original wire, is that what you call it, Mr. Brownson?

A. That is right.

Q. If you were to play the original wire that was made in Mr. Simpson's office that afternoon, how many voices would we hear on that wire?

[fol. 271] A. I have tabulated the number of voices as I heard them on the wire. It is on the note right there.

Q. I show you your memo, Mr. Brownson; can you give us the names of the persons whose voices you recognize on the wire?

A. I can.

Mr. Henderson: May this memo be marked next in order for identification?

The Court: 47.

Mr. Henderson: That is what, your Honor?

The Court: 47.

By Mr. Henderson:

Q. Now, will you refresh your recollection and tell us the voices we would hear on the wire if you were to play it at this time?

A. This list is not necessarily in the order in which they are first heard. There is Mr. Stroble and Mr. Henderson and Mr. Alexander and Mr. William Simpson. The last three of which all asked at one time or another questions or addressed remarks to him directly. There are other voices which can be understood, various remarks, through the wire—Mr. John Barnes, Mr. Ernie Roll, Officer Carlson, Miss Edith Simpson and myself.

Q. Now, as far as this original wire is concerned, Mr. Brownson, has that wire been in your possession ever since it was taken?

A. It has.

[fol. 272] Q. During that time have you added to or taken from or tampered with that wire in any way?

A. I have not.

Q. If you were to play the original wire at this time, would the jury hear the questions put to Mr. Stroble and the answers he gave?

A. That is correct.

Q. And in addition to voices, Mr. Brownson, will we hear other things on the machine?

A. Yes. There will be considerable background noise, the street cars going by, the afternoon was very hot and the window was left open.

Q. Coughing?

A. Pardon?

Q. Will you hear coughing and things like that?

A. There was considerable coughing and the squeaking of a chair all through the recording.

Q. Who was responsible for that noise?

A. Mr. William E. Simpson.

Q. How far was he from the mike?

A. Almost as close as Mr. Stroble, he was sitting real close.

Q. Suppose you hear chair noises and things of that sort?

A. Yes.

[fol. 273] Mr. Brownson, was any force or threats of force used on Mr. Stroble to get him to talk that afternoon?

A. No.

Q. Any promises made to him?

A. There was not.

Q. Did he answer freely and voluntarily?

A. He did.

Q. Will you play the original wire, please?

Mr. Hill: If your Honor please, at this time for the purpose of the record we make the objection made upon the grounds made in the absence of the jury yesterday afternoon.

The Court: The same objections that were made to the reading of the statement are applicable to the recording.

Mr. Hill: On both grounds, are the two objections made.
The Court: Yes.

Mr. Matthews: I just want to ask Mr. Brownson one question.

Q. You say at no time has this wire recording been out of your possession?

A. No, sir.

Q. You are absolutely sure of that?

A. Absolutely.

Q. You are also sure that there has been no change of any kind made in the recording?

A. The only change made was the break in the wire [fols. 274-377] and there is that elimination of about six words.

Q. There has been no transposition of any material?

A. There has not.

Q. There has been nothing added?

A. No.

Q. There has been nothing taken away?

A. No.

Mr. Matthews: Thank you.

By the Court:

Q. In other words, to put it in the vernacular, there has been no dubbing?

A. That is correct.

Mr. Matthews: That is correct.

Mr. Henderson: May I suggest you do one thing, Mr. Brownson. When we hear a voice for the first time will you stop the machine and identify that voice? May he do that, your Honor?

The Court: Yes.

The Witness: Your Honor, perhaps I should say this—

Mr. Henderson: Just a moment, Mr. Brownson. During the first five minutes, as I understand it, Mr. Stroble was not in the room, is that right?

A. That is approximately correct.

Q. During that period of time we will just hear a group of men talking back and forth about most anything, is that correct?

A. That is correct.

[fol. 378] Dr. MARCUS CRAHAN, having been first duly sworn as a witness on behalf of the defendant, was examined and testified as follows:

The Clerk: Your name, sir?

The Witness: Marcus Crahan.

Direct examination

By Mr. Matthews:

Q. Dr. Crahan, you are a physician and surgeon, is that right?

A. I am.

Q. And you are connected with the County of Los Angeles?

A. I am.

Q. And you are in charge of the hospital of the county jail?

A. Yes, I am.

Q. Did you have occasion on or about the 17th day of [fol. 379] November, 1949, to examine the defendant, Fred Stroble?

A. I did.

Q. Did you observe, Doctor, that he is a man of approximately 68 years of age?

A. Yes.

Q. And you made a physical examination of him?

A. Physical as well as mental, yes.

Q. Both physical and mental?

A. Yes.

Q. Now, Dr. Crahan, for the purpose of orienting all of us as to some of the aspects of this case, can you familiarize us with the doctrine of imbalance of hormones?

Mr. Alexander: To which we object as incompetent, irrelevant and immaterial.

The Court: The objection is sustained at this time. There is no foundation laid.

Mr. Matthews: As to imbalance of hormones?

The Court: It appears to be irrelevant at the present time.

Mr. Matthews: Well, is the court assuming that it is familiar with the doctrine of imbalance of hormones?

The Court: If you are referring to Dr. Clifford Wright's work, yes.

Mr. Matthews: That is what I am referring to.

The Court: There is nothing in the case at the present time to indicate that any such doctrine is here [fol. 380] involved.

By Mr. Matthews:

Q. Doctor, after a medical and psychiatric examination of Fred Stroble did you discern a physical condition which could be described as arising from an imbalance of hormones?

A. I did.

Q. Now, will you describe for us the general medical doctrine of the imbalance of hormones?

A. Well, we have a number of hormones in the system, and the hormones have a function of keeping the nerves more or less in equilibrium, and any imbalance of one particular hormone or another will usually create some changes in the physical form of the individual or possibly in organic function.

Q. Do some of these imbalances usually arise at a certain time of life?

A. Some of them do, but I don't think Mr. Stroble's did.

Q. When do you think it arose?

A. It is difficult to say, but I think the secondary sex characteristics found on Mr. Stroble at examination were probably there as early as puberty.

Q. Were those secondary sexual characteristics indicative to you of a latent homosexuality?

A. To a possible latent homosexuality.

Q. What were the physical indications of that?

[fol. 381] A. He had prominent breasts—

Q. Do you wish to refer to your report?

A. Yes, Your Honor, may I refer to my report?

The Court: Yes, certainly. Any memorandum that you have that will help you refresh your memory or enable you to testify more fully, you may use, anything you have along that line.

A. All right. The general configuration is that of the potential endocrine homosexual type, with hairless chest,

prominent breasts, rounded abdomen, rounded and in-turning thighs, triangular pubic hair distribution, and a prominent pre-pubic fat pad; testicles are of normal size and soft; the penis is normally developed; the temporal vessels are tortuous.

Q. Now, can a man have a condition like that which you have indicated—sometimes as indicative of latent homosexuality and not be aware of that fact?

Mr. Alexander: That is immaterial, if the court please.

The Court: Objection sustained.

By Mr. Matthews:

Q. Well, do you think that homosexuality is a normal thing?

Mr. Alexander: That is immaterial.

The Court: I will allow that question.

Mr. Matthews: It has to do with hormone imbalance.

The Court: You may answer.

[fol. 382] A. That is a most difficult question to answer.

By Mr. Matthews:

Q. Doctor, in the light of the doctrine of hormone imbalance—

The Court: Due to the fact that it is pretty hard to say what is normal, isn't that it?

The Witness: Yes, your Honor.

By Mr. Matthews:

Q. I mean doesn't it arise from the hormonal structure for the glandular structure of the individual?

[fol. 383] Mr. Alexander: Objected to as leading and suggestive, if the Court please.

The Court: Well, I don't think there is any danger of Dr. Crahan being led.

Mr. Alexander: And it is immaterial.

The Court: I will allow the question to be answered.

A. No, homosexual is divided into ten different classifications and only one of them is endocrine.

By Mr. Matthews:

Q. Well, you did find these physical indications in the defendant Fred Stroble, did you not?

A. Yes.

Q. Now, as to his physical condition, did you have occasion to make an examination to determine whether or not he had arteriosclerosis?

A. Yes.

Q. And what did your findings indicate?

A. His temporal vessels were tortuous which was the last sentence I read. He also had a blood pressure of 176 over 100.

The Court: I think it would be of some assistance, if you will pardon me, Mr. Matthews, if we allow the Doctor to give an English definition of arteriosclerosis.

Mr. Matthews: Are you familiar with the Judge's suggestion?

The Court: I think the Doctor knows what I mean.

[fol. 384] The Witness: Arteriosclerosis is usually an aging process in which there is increased calcification in the wall of the blood vessels, and this makes the blood vessels more rigid and less flexible than they would be prior to this arteriosclerosis or commonly known as hardening of the arteries. It is a normal process of aging and sometimes brought about by stress or worry earlier than ordinarily seen.

By Mr. Matthews:

Q. Does this physical change that arises from arteriosclerosis, does it sometimes have a mental effect on a person?

A. Yes. It may have an effect of producing what we call commonly as second childhood, childishness of the aged, sometimes going so far as to produce actual dementia.

Q. Well, now, getting away from dementia, and talking about childishness, did you see any indication of that arising from arteriosclerosis present in the defendant Fred Stroble?

A. Nothing that I could clearly state would be childishness excepting for his apparently extreme willingness to

divulge anything and everything that one wanted to ask him.

Q. He was garrulous, in other words, would you say?

A. Yes, I think you could use that term.

Q. Is there a psychological term known as circumstantial details that sometimes accompanies arteriosclerosis? [fol. 385] In other words, a fullishness of detail of anything that he relates?

A. Well, that is found in other things, but it may accompany arteriosclerosis.

Q. And you did find that in Fred Stroble, did you not?

A. He was fully detailed; I would say that.

Q. Now, he had occasion to relate to you, let's say his alcoholic past; was that not true?

A. Yes.

Q. Are you familiar with the effect of ethyl alcohol upon the human organism?

A. Yes.

Q. And it is true, is it not, that it is classified as a narcotic poison?

Mr. Alexander: That is immaterial, if the Court please. There is no testimony in the record so far to that effect.

The Court: Overruled. You may answer.

The Witness: No. I think the term of a narcotic poison has been used for political purposes by certain groups. I don't think alcohol can be classified as a narcotic.

Q. How do you classify it, Doctor?

A. It is an intoxicant.

Q. From the description of the drinking habits that Fred Stroble gave you about himself, would you say that they indicated a long continued and excessive use of alcohol? [fol. 386] The Court: Just a minute. I think before you ask for the Doctor's opinion to the question which is largely hypothetical, the facts upon which the opinion is based should be brought forth. Otherwise we have no means of appraising the Doctor's opinion.

By Mr. Matthews:

Q. Doctor, did he give you any history about the use of alcohol?

A. Yes. He said that he had used alcohol moderately all of his life, but that he had used it in considerable excess from the time of his—the end of his occupation.

Q. And did he tell you that was in 1946 that he ended his occupation?

A. Yes.

Q. Now, Doctor, isn't it true that an abusive use of alcohol has a tendency to temporarily paralyze the inhibiting functions of the cerebral cortex?

Mr. Alexander: If the Court please that is immaterial.

The Court: Sustained upon the ground that it is irrelevant, there being nothing here to show that condition here existed so far as the facts in this case are concerned; in fact the evidence seems to be to the contrary.

Mr. Matthews: Well, your Honor, if the Court thinks it is to the contrary I would like to have the Court relate where the Court thinks it is to the contrary.

The Court: I have in mind the testimony of the lady at [fol. 387] the hotel who said that he was perfectly sober.

Mr. Matthews: You mean the lady that got out of bed at 1:30 in the morning?

The Court: Yes.

Mr. Matthews: And you feel that because she said that and the defendant tells us—

The Court: The defendant hasn't told us anything, Mr. Matthews.

Mr. Matthews: Well, now, your Honor, the State has introduced the confession and they are bound, as I understand the law, by the statements made to them when they introduced the confession, the statements of the defendant contained therein, in the absence of proof to the contrary. [fol. 388] The Court: There has to be proof, or a basis for a hypothetical question, which has not yet been laid, nor has it been included in any question propounded to the doctor, and you are asking the doctor to predicate his statement, his testimony, rather, upon what Mr. Stroble told him, and there is nothing in the record to show what Mr. Stroble told him.

By Mr. Matthews:

Q. Doctor, what did Mr. Stroble tell you about his drinking habits?

The Court: We haven't gone into the drinking habits.

By Mr. Matthews:

Q. What did he tell you about the use of alcohol on let's say the 14th day of November, 1949?

A. He admitted that he had been drinking, that when she repulsed his advances he was not willing to let her go, although he did not want to force her.

Q. Now, isn't it true that there is a difference where a man drinks, the same man drinking and the same man not drinking, that there is a difference in the inhibiting function of the cerebral cortex?

A. Inhibitions are lowered by alcohol, yes.

Q. That is true. Now, when these inhibitions are lowered, isn't it possible that the lowering of inhibitions releases lower archaic levels of behavior unrelated to the light of reason?

Mr. Alexander: That is irrelevant and immaterial, if [fol. 389] the court please. I object to the form of the question.

The Court: Sustained upon the ground that I don't understand the question.

Mr. Matthews: Will you read the question?

The Court: I heard the question, but I don't understand it, Mr. Matthews.

Mr. Matthews: Well, I am reading from Dr. Parkin's report, your Honor. I am trying to use psychiatric language.

The Court: Lots of times they use language I don't understand.

Mr. Matthews: I think we will and they do for all of us in this case.

Q. Now, isn't it true that when inhibitions are removed of a human being that there is a tendency then for the conduct of that human being to return to a lower, archaic level of behavior unrelated to the light of reason?

Mr. Alexander: To which I will object as incompetent, irrelevant and immaterial, and object to the form of the question.

The Court: I think I will allow the question to be answered.

A. Well, I don't know what archaic behavior is.

The Court: May I try to simplify it a little, if I understand Mr. Matthews' question, it is this:

[fol. 390] If a person partakes of alcohol, does that have the affect of removing his inhibitions and creating a tendency on his part of doing those things which he naturally would like to do, but which he restrains himself from doing when he is in full possession of his faculties?

A. Yes, your Honor.

By Mr. Matthews:

Q. Now, under the excessive use of alcohol, Doctor, even at a particular time, isn't it true that there comes a disintegration of character with regression to juvenile attitudes?

A. Not necessarily.

Q. What does the term senility mean, Doctor?

Mr. Alexander: To which we object as incompetent, irrelevant and immaterial.

The Court: Well, we haven't any senility in the case yet, Mr. Matthews.

By Mr. Matthews:

Q. Did you find any indications of senility in Fred Stroble?

A. Yes, the tortuous vessels mentioned, also the soft testicles.

Q. What do you mean by senility, Doctor?

A. Aging processes.

Q. Now, in the light of the indication of the homosexuality that you found in Fred Stroble plus the aging processes that you found in Fred Stroble plus the excessive use of alcohol that you found in Fred Stroble as related to [fol. 391] you by Fred Stroble, are these things indicative

to you of a condition that might cause him to revert to lower and earlier levels of sexual behavior?

Mr. Alexander: To which we object as irrelevant, if the court please.

The Court: Objection overruled. You may answer.

A. With the findings of arteriosclerosis and with alcoholism it is frequently seen that the individual will revert to a less conventional behavior pattern, one that is inferior to the normal conventional acceptance, but whether he reverts to a juvenile attitude—it is possible but not always the thing that happens.

Q. That might not always obtain?

A. No.

Q. Is that right, Doctor?

A. That is right.

Q. But the older a man gets in this process and if he does revert does he not then revert to an earlier age?

The Court: Mr. Matthews, your question is—if he reverts does he revert.

Mr. Matthews: I think the doctor referred—

The Court: Well, you put the hypothesis in there, which is just like asking the question, If the man is insane is he insane? or If the man has appendicitis has he appendicitis?

By Mr. Matthews:

Q. Doctor, you find a man 68 years of age who admittedly [fol. 392] molests children; what is wrong with him?

A. Well, there could be one of several things wrong with him, but I think to answer your earlier question, what I think you meant was a statement in my report that the older the offender, the younger his victim. In other words, the age of the victim is inversely proportional to the age of the aggressor, in dealing with these senile things.

Q. Well, does 68 and 6 about match off?

A. I would think so.

Q. Getting back to the doctrine of imbalance of hormones; in connection with such imbalance does there sometimes arise a situation known as the male menopause?

A. Yes, that frequently arises.

Q. Will you tell us something about that, Doctor, if you please, the male menopause?

A. Well, the male menopause develops as a result of a diminution of the supply of androgenic hormones which will produce in an individual, if the diminution is rapid enough, signs of psychoneuroses, physical exhaustion, sometimes emotional exhaustion, and signs of hypochondriasis.

Q. Getting away from the male menopause for a moment and speaking about the female menopause, what are the indications, Doctor, that a woman is undergoing that [fol. 393] period of life?

Mr. Alexander: That is immaterial.

The Court: Objection sustained. I think it is entirely irrelevant.

By Mr. Matthews:

Q. Is there a similiarity?

The Court: Objection sustained to that. If the doctor answered that there was, still we have the other situation before us here. You can go into questions as far as they relate to this case, but that is not preliminary to anything having to do with this case.

By Mr. Matthews:

Q. Now, this man, Stroble admitted to you, did he not, that he had been guilty of sexual aggression on several children over a period of years?

A. Yes, sir.

Q. Did that lead you to classify him as any particular type of psychopath?

A. Yes; I felt that he was more within the range of the sexual psychopath.

Q. Now, assume, Doctor, from your knowledge of the man and your examination, both medical and psychiatric, that he murdered a girl six years of age, and I might say, assuming that he related the details to you of said purported murder—Did he relate to you that he had murdered a girl?

A. Yes, he did.

Q. Considering the sexual psychopathy, in your opinion [fol. 394] was it in any manner related to the murder of that girl?

A. No.

Q. In your opinion, what was the relationship, if any, between the murder and his sexual psychopathy?

A. There was no relationship at all, because he got no sexual thrill from the murder. He did not do it as a sexual outlet. The murder was purely a defense mechanism.

Q. What do you mean by that, Doctor?

A. That several things went on in his mind subsequent to his sexual playing with the girl. First, that she seemed distant to him—she was not as friendly as she had been on former occasions and he was afraid that she would tell her mother or that he would be exposed, and he had been warned the day before by his son-in-law that he would have to leave the house, or he could not any more stay there because he was wanted by the police. When he started playing with the little girl and she screamed that set off this defense mechanism which was in the form of a reflex action in which he choked her to stifle the screams.

[fol. 395] Q. In your opinion, then, Doctor, was that murder committed as a result of panic and fear of detection and further was it purely incidental to his sexual intrusion upon the victim?

A. Yes.

Q. And you believe further that the act of murder was not sexually inspired; is that true?

A. Yes, it was not.

Q. And that it should be considered apart from any sexual aberration of the defendant and you believe further that it is unrelated to any sexual aberration of the defendant.

A. I do.

Mr. Matthews: You may cross examine.

Cross-examination

By Mr. Henderson:

Q. Doctor, what is this ethyl alcohol that you were questioned about?

A. That is a form of alcohol we drink in whiskey and gin.

Q. If you go across to the liquor store and buy a pint bottle of whiskey, that is the kind of alcohol that you get, is that it?

A. Yes.

Q. Now, Doctor, would you describe in the simplest language you can best use, the physical examination you made [fol. 396] of Fred Stroble on November 17th—on the afternoon of the 17th of November of last year?

A. Well, I stripped him to the skin excepting for his shoes and socks, later taking off his shoes, I examined him by inspection. I took his blood pressure and listened to his heart and listened to his lungs and felt his abdomen, felt his testicles and checked his reflexes. That is what it constituted.

Q. Now, the blood pressure was 176 over 100, is that right?

A. Yes.

Q. What does that mean?

A. That means that he has a mild hypertension.

Q. Well, what does that mean, can you give it a little simpler to us?

A. A mild high blood pressure, we will say.

Q. Is that an uncommon condition?

A. Not at his age group, no.

Q. Do you have any idea how many men of Mr. Stroble's age have that blood pressure in the neighborhood of 176 over 100?

A. I would say about half of them.

Q. About half of them?

A. Yes.

Q. Now, was there anything else unusual in his physical make-up that you discovered in this physical test?

[fol. 397] A. Just the secondary sexual characteristic that I mentioned, this prepubic fat pad and the inturning thighs and the triangular hair distribution and more or less prominent breasts and the soft testicles.

Q. You say you took his shoes off. Did you see his feet and his shins?

A. Yes.

Q. Did you see any bruises of any kind on them?

A. No.

Q. You say you gave him a psychiatric examination, is that right?

A. Yes.

Q. Will you describe that to us in detail, Doctor, and if you wish to use your report, I believe the Court will permit you to do so.

A. Well, the psychiatric examination consisted chiefly of questions and answers with observations of his reactions at questioning, and observations as to the manner in which he responded or told his story independently. It also included occupational history and habits as well as previous illnesses, family history and so on.

Q. Now, Doctor, without giving us any opinion that you ultimately arrived at, by referring to your notes can you tell us the questions that you asked and the answers Mr. Stroble gave, in substance?

A. Do you want it complete?

[fol. 398] Q. Yes.

A. I will have to read it.

The Court: You may do so, Doctor.

A. I haven't these down by question and answer. I just have them according to his personal narrative. He is a white male, age 68, born on October 8th, 1881 in Austria. His occupation, retired baker.

His father died at age 51, cause unknown, at subject's age 11. During his lifetime he was employed as a brewmaster. His mother died at age 54, when subject was about 17 years of age, cause unknown, and was employed at domestic work to support her family of 12 children.

Education and Occupations:

He attended school in Austria to the equivalent of the fourth grade at age 14, when he became an apprentice to a baloney maker. When he had finished this apprenticeship he came to the United States at about 18 years of age, working his way with New York City as his destination.

For some time he was unable to find work because of strikes and went back and forth to Europe three or four times until he had enough money to stay in America. His first trip was made in 1901. He continued to look for work

but the strikes continued. Finally he found employment in a small town about 30 miles from New York where he met a baker, Fred Bauer, who encouraged subject to learn the baking trade as baloney making was difficult and proving to be non-profitable. Subject agreed with this as his [fol. 399] hands were constantly irritated by the use of salt petre and other ingredients used in baloney making and consented to learn baking, offering his services without salary. Mr. Bauer would not agree to this and paid subject \$5.00 a week for his efforts, which in those days made him a 'rich man.' After working for Bauer several years, he returned to New York where he was employed by the Fleishman Yeast Company. This job terminated because of a strike and from that time until he came to California in 1924 he worked at various small jobs in small communities as a baker. During the First World War he claimed to have been drafted in the army but that the war was over before he was called.

Upon arriving in Los Angeles he was employed by the Van De Kamp bakery at their original Main Street address, shortly after the firm started in business, and continued there until 1946. At that time he went on a vacation and upon his return found strikers surrounding the plant. He did not want to go through the picket lines, although he was not a union member, and later when the strike was settled, he was called into the office and told by his employers that they were very disappointed in him, feeling that he was the 'one man who would have stayed loyal to the firm.' Because of this he was discharged and although he called his former employer as often as three times a week, they consistently refused to reemploy him. Since that time [fol. 400] he has had no work, has lived on his savings and 'got into trouble.' Asked if he was a naturalized citizen of the United States, subject replied that he was not, but rather haltingly told of having taken out first papers several years after coming to America, and that although he had every intention of completing his citizenship, he had never accomplished this. After a few minutes he asked to correct this statement, admitting that he had never applied for citizenship and claiming that he wanted to 'stay with the truth.'

Habits and Recreation:

Subject admits to the use of intoxicants, stating that for the past three years he has used more alcohol than at any other time during his life, consuming about ten bottles of beer and three or four shots of whiskey daily. The degree of his subsequent drunkenness would depend upon whether he ate while he was drinking. He claimed that during the many years he was working, his drinking was restricted to week ends or after hours and rarely to excess. He does not smoke and denies the use of narcotics. He has no hobbies and no particular recreational interest, stating that since he has not been employed he has been 'lost' with nothing to do. While working his habits would be moderate as he would be tired at the end of the day and content to come back to his dinner and read the paper and magazines. On several occasions he went fishing with his son-[fol. 401] in-law and formerly enjoyed playing pinochle. While in Mexico he learned to play pool but did not like the 'gang' in the pool parlors and preferred to play this game in the home of his son-in-law who owned a large four-story house on Doheny Drive in which they had a large recreation room and pool tables. Recently he has gone to see movies about twice a week; listened to the radio, preferring comic programs; and the rest of his time loafing and going in and out of bars.

Marital and Sex History:

At age 18 subject first had sexual intercourse and states this was repeated sometimes once a week and sometimes only once in two or three weeks, with girl friends as he did not have enough money to pay prostitutes.

In 1915 he was married to a young woman who he met on board ship en route to San Francisco at the first sailing through the Panama Canal. This marriage has continued to the present time, although in 1943 while in Honolulu and, subject believes, as a result of the bombings during the war, his wife became mentally ill and violent, and it was necessary to have her committed to the Norwalk State Hospital. He understands that she has recently been transferred but does not know to which institution and when the Camarillo State Hospital was mentioned he believed that

to be the place of her present commitment. He states that after this occurred he found that she had suffered a [fol. 402] 'nervous breakdown' at age 18 for which she was institutionalized for about three months.

There is one daughter resulting from this union, now 31 years of age and the mother of two children. His son-in-law has been very friendly to subject who has spent long periods of time in their various homes. For some time they maintained a large home in Honolulu where subject visited them each year. The son-in-law is associated with the Publishers' Guild who are publishers of encyclopedias and medical works. Although he enjoys visiting with his daughter and her family he has always tried to maintain a place of his own.

During his married life he had coitus once or twice a week and denies extra marital relations. Since then he has intercourse with friends or prostitutes about once in two weeks, the last occasion being in Tia Juana about five weeks ago. He admits to masturbation 'whenever he has to', about once every two weeks but denies homosexual experience or desire.

Subject states that his only sex problem is that which is responsible for his present predicament. He has always been extremely fond of young children, ranging in age from four to ten years, and that this affection is created by their appearance, nice manners, politeness, their form and 'way of acting.' He enjoys 'playing with them' but denies that he has any desire for intercourse, contenting himself [fol. 403] by fondling them, kissing them, and placing his hands upon their private parts and rubbing the clitoris with his fingers. The little girls with whom he played, and he admits to four of them, seemed to like this 'play' and he, in turn, enjoyed making them happy. While fondling them he would press his body to theirs, 'squeeze' his penis against them until he experienced an emission.

He admits that while living at 6262 Verdugo Road quite a group of children came to play in this garage where they found many nudist magazines, although subject denies their purchase. The children enjoyed these and subject played with all of the children but his chief affection was given to one little girl in particular. He denies having exposed

himself to the children, of trying to place his penis between their legs, or attempting to have intercourse with them. He admits to having played intimately with a little girl in Honolulu, with the child on Verdugo Road, another child, and his present victim, claiming that he loved this latter child more than any little girl he ever knew. The group of children who played at his garage at Verdugo Road included boys as well as girls. He claims there were long intervals between his affections for these various children and that he had never previously had similar association with children until the time he was discharged from his bakery work, at which time he never got into trouble because he 'gave all of his energy to his work', stating that the first such incident [fol. 404] occurred about three and a half years ago. He admits to having placed his mouth upon the private parts of these children 'only a few times to find out what it was like'.

Previous Illnesses, Accidents and Surgery:

Subject denies serious illness or operation. About ten or eleven years ago he suffered a laceration of the forehead for which he was treated at the Los Angeles County Hospital for a period of two weeks. Examination at that time did not reveal a fracture. On one other occasion, on a Friday evening after work he had a few drinks with friends and while going across the street to get into a friend's car, was struck by an automobile, the only injury being to his leg. Subject denies venereal disease, fits, fainting spells or mental commitments. With the exception of his wife, no other family member has been so committed.

Previous Legal Involvements:

On May 5, 1949, subject was arrested at 6262 Verdugo Road and was charged with contributing to the delinquency of children, approximately seven parents signing the complaint. He admits to having 'wrestled and played' with these children and with one little girl in particular, admitting that he fondled and played with her private parts. He failed to appear for trial and a warrant for his arrest had not been served. On the day previous to his present alleged

act's commission, his son-in-law and daughter had talked [fol. 405] to him about this matter, telling him that he could no longer 'hide out' in their home and must consult their attorney, Mr. Gray, and he must give himself up to the police. He agreed to this but early in the morning changed his mind and left the house without telling his family. It was upon his return to their home that the present alleged act occurred.

Present Involvement:

Subject states that for the past two months he has spent most of his time in Tia Juana, Mexico, going back and forth several times and staying for five weeks on the last occasion. He became lonesome for his grandchildren, however, and decided to come home, stating that if it wasn't for the children he would 'never come home.' On Monday, November 14th, 1949, he had left home early in the morning, after promising his son-in-law that he would give himself up to the police on a previous charge of molesting small children, but had not returned home early in the afternoon."

Mr. Matthews: (Interrupting) Pardon me, but had returned, isn't it?

The Witness: "But had returned home—" pardon me—"but had returned home early in the afternoon."

[fol. 406] He states he cannot understand his alleged act, the murder of six-year-old Linda Joyce Glucoft, claiming that he loved the child more than any one in the world. He admits to having played with her on many occasions previously, that he would hold her on his lap, kiss and fondle her, place his hands upon her private parts and rub her clitoris, which seemed to please the child; and she would smile at him and welcome his love making.

On the day in question, however, he took her into his grandson's bedroom and placed her on the bed, but when she objected to this and asked that they go outside and play, he asked 'We play in here a while.'

Subject admits that he had been drinking and that when she repulsed his advances he was not willing to let her go, although he did not want to force her. He managed to push her back to the bed and took off her panties, but as he started to play with her she screamed. This scream instantly frightened him terribly and he thought of this act's

danger if he was apprehended, in view of the police charges against him. He placed his hands around the child's throat to stop her screaming and held it there until he realized she was unconscious. Not certain that she was dead he went to get a necktie and garroted his victim.

By this time he was frantic, trembling and perspiring profusely, so that he was unable to handle the child's body. [fol. 407] Taking a blanket from the bed, he opened it upon the floor, and placing his victim on the blanket wrapped it around her. Then fearing she might still be alive and suffering, he went to the kitchen to get a hammer, brought it back and hit the child on the head with this hammer several times. Still not certain she was dead, he went back to the kitchen and got a ice pick with which to stab her through the heart, but he was so nervous that he could not remember on which side the heart was located and struck her with the ice pick three times—on one side once, the other side twice. Not convinced that she was dead and not suffering, he then went to the garage and brought back an axe with which he struck the child twice at the base of the spine and once on the neck.

It was then he thought of a bull fight that he had seen in Mexico and of the small dagger used at the kill and again returned to the kitchen to get short knife which he attempted to plunge into the back of her neck, but was unable to penetrate the neck more than approximately one-half inch.

He then took the prostrate body wrapped in the blanket to the incinerator. Almost immediately after this he left the house to go to Ocean Park, feeling 'this is my last day,' and intending to get drunk and to drown himself.

He went from bar to bar and then walked out on the pier [fol. 408] to find a place to jump into the ocean. Finding the pier roped off and a jumping place not too convenient, he decided to wait until the following day, to drink some more, and then jump off the pier.

After stopping at several bars he found a rooming house advertising rooms at 75 cents and up, applied for one of these rooms and was given a room much cleaner than he had expected.

He then went to the wrestling matches and returned to his room about midnight, but was unable to sleep until nearly morning. He was awakened by a cleaning woman in the

morning and after dressing went to the corner drug store for breakfast.

He then went from bar to bar and finally walked out on the pier to watch men fishing. While on the pier he saw the body of a man being taken from the water who had previously committed suicide, and at that point decided not to kill himself; that as long as he would have to pay for his act after death he might just as well pay here.

And after having more beer and some straight whiskey to which he was unaccustomed he took a street car in to Los Angeles where he was apprehended almost at once in a bar. He states that he had stopped then before reporting to the police because he wanted to call his daughter, his son-in-law, Mr. Van de Kamp, and his attorney. Subject [fol. 409] states that subsequent to his arrest the police officers concerned with his case were all very kind to him, that he had not been mistreated and had been given every consideration.

Mr. Matthews: Now, your Honor, at this time may I request the court to take the recess? I think that the Doctor's throat—and I want to go into another matter coming up here.

The Court: We will take our recess at this time. The jury will keep in mind the admonition heretofore given.

(Recess).

The Court: Let the record show the jury, counsel, and the defendant present, and Dr. Crahan on the stand.

You may proceed.

The Witness: Physical examination.

Subject is an extremely short, well developed Austrian male of 65 apparent years. When stripped there are no evidence of bruises, contusions or lacerations over the entire body, nor is there any limitation of movement or function of any of the four appendages. There is an old healed linear scar running diagonally downward over four inches in length from the hair line to the inner canthus of the right eyebrow. This was incurred in a street car accident several years ago. The blood pressure was 176 over 100, pulse 72 and regular. There are no heart murmurs and no evidence of congestive failure. The liver, spleen and

[fol. 410] kidneys are not palpable. Pupils are moderately constricted, but react to light and accommodation. The eye grounds are normal. Reflexes are physiological. Romberg and Babinski are negative. The general configuration is of a potential endocrine homosexual type, with hairless chest, prominent breasts, rounded abdomen, and rounded and inturning thighs, triangular pubic hair distribution and a prominent prepubic pad. Testes are of normal size and soft. The penis is normally developed. Temporal vessels are tortuous.

Mental status. Subject is at ease. Relaxed. Quite casual in conversation. Responds readily and almost eagerly to questioning. Is most frank and open in discussion. Is well oriented in all fields and is rational and logical in all matters.

He has a stable and excellent work record up until the time of his discharge in 1946.

Apparently had a satisfactory marital relationship until his wife's commitment in 1943.

He attempted evasion on only one subject, his citizenship, which seemed to embarrass him more than his present involvement. He readily admits and without reluctance an intense compelling urgency to manipulate the clitoris and vagina of young girls, ages six to ten years on repeated occasions. He denies exposing his private parts to these [fol. 411] children, or of attempting to induce them to orally copulate him, also he admits to having attempted to orally copulate his present victim a couple of times. He claims that this urge developed about three or four years ago, although his secondary sex characteristics as above outlined in the physical examination suggested that this tendency was at least latent for many years prior to that time. There is little doubt, however, that his tendency has increased in recent years due to arteriosclerosis including cerebral sclerosis, and that his inhibitions have probably been lowered, due to this factor. His admitted sexual aggressions to several children over a period of years classify him as a sexual psychopath. However, his sexual psychopathy was in no manner related to his murder of the present victim. This murder was committed as a result of panic and fear of detection and was purely incidental to his

sexual intrusion upon the victim. The act of murder was not sexually inspired and should be considered only apart from his sexual aberrations and unrelated to them.

Q. Now, Doctor, on Thursday afternoon—when on Thursday afternoon on the 17th of November of last year did you see Mr. Stroble?

A. I think it was somewhat around three o'clock in the afternoon. I am not sure of the time.

[fol. 412] Q. You saw him on the same day on which he was arrested, is that right?

A. Yes.

Q. About how long did you interview the defendant that afternoon?

A. I don't know. Perhaps an hour and a half or two hours.

Q. Did Officers Brennan and Tullock, the investigating officers, bring Mr. Stroble to your office?

A. Yes.

Q. Now, Doctor, as I understand it, it is your opinion that there is no connection between Mr. Stroble's killing of Linda Glucoft and his sexual appetite for the body of small children, is that right?

A. That is correct.

Q. As I understand it, it is your opinion that he receives no sexual satisfaction whatever from torturing a child, like hitting her with a hammer or cutting her with a knife or anything of that sort?

A. That is correct.

Q. Now, Doctor, from your examination of Mr. Stroble on the 17th of November do you have an opinion as to these thoughts that were going through his mind when he killed the child on the preceding Monday afternoon?

A. Yes.

Q. Now, directing your attention to the occasion, Doctor, [fol. 413] on which he placed his hands around the child's throat and choked her, what in your opinion were the thoughts that were going through his mind immediately before and at the time he choked the girl with his hands?

A. Immediately before he choked her she screamed and this produced in him a sudden panic and fear and he choked her by reflex action.

Q. As I understand it, then, Doctor, at the time of the choking with the hands that was not a deliberate premeditated act, was it?

A. It was not premeditated, but it was deliberate.

Q. It was a deliberate act?

A. Yes, a defensive act.

Q. Did Mr. Stroble tell you that after he choked the child with his hands and then got off the bed, that she came back and started to move around and that he realized she was still alive?

A. I am not sure that he told me that, but he thought that she was still alive.

Q. Did Mr. Stroble tell you that he then went to another part of the bedroom and selected a necktie and went back to the child and strangled her with the necktie?

A. Yes, he told me that.

Q. Do you have an opinion as to what thoughts if any were going through his mind at the time that he went to get that necktie and then strangled the child with the [fol. 414] necktie?

Mr. Matthews: I object to that. There was no information given to him by the defendant that would be a basis for an opinion on his part as to a scientific opinion; furthermore, it is a question for the jury.

The Court: Objection overruled.

A. I think it was obvious that the thought running through his mind when he went to get the necktie was that he intended to finish the job of killing her. It was a deliberate move and a deliberate act to get the necktie for a set purpose.

Q. Do you think that the selection of the necktie as a weapon and the using of the necktie as a weapon was a deliberate and premeditated act?

A. Yes.

Q. Now, Mr. Stroble told you, Doctor, didn't he, that after he used the necktie on her, he thought the child was still alive and got a hammer; is that right?

A. Yes, sir.

Q. He told you that he struck the child with the hammer?

A. Yes.

Q. Do you have an opinion as to what thoughts were running through Mr. Stroble's mind when he selected the hammer as a weapon and used the hammer as a weapon on the child's head?

[fol. 415] Mr. Matthews: The same objection.

The Court: The same ruling.

[fol. 416] A. Now his thought processes changed to one of wanting to end her suffering. At first it was defensive. Next it was pity and hoping to end her suffering so she would not have pain or suffering as a result of his earlier acts.

Q. In your opinion, did Stroble intend to kill the child when he selected and used the hammer as a weapon?

A. Yes, sir.

Q. Do you think that the selection of the hammer and the use of the hammer on the child's head was a deliberate premeditated act?

A. Yes.

Q. Now, did Mr. Stroble tell you that after he used the hammer on the head he thought she was still alive and he went into the kitchen and selected an ice pick and returned to the child and had difficulty in determining where her heart was located?

A. Yes.

Q. Did he tell you that he used the ice pick on the child by putting it into her?

A. Yes, sir.

Q. Do you have an opinion, Doctor, as to what his thought processes were when he selected the ice pick and used the ice pick on the child's body?

A. Yes, he was deliberately trying to murder her, to finish the murder, complete it.

Q. Do you think the selection of the ice pick and the [fol. 417] use of the ice pick on the child's body was a deliberate premeditated mental act on Mr. Stroble's part?

A. Yes.

Q. Did Mr. Stroble tell you that after he used the ice pick he thought the child might still be alive, so he got the axe and used the axe on her?

A. Yes, sir.

Q. Do you have an opinion as to what his thought processes were when he selected and used the axe on the child?

A. Yes, sir.

Q. What is that opinion?

A. He was deliberate in his use of the axe to complete the murder.

Q. He intended to kill her with the axe, did he?

A. Yes.

Q. And selected—the selection and use of the axe on the child was a deliberate and premeditated act on Mr. Stroble's part, is that right?

A. Yes.

Q. Did Mr. Stroble tell you that after he finished using the axe on the child he thought the child might still be alive and he remembered how they do away with the bull at the end of a bull fight, and he selected a knife and used a knife on the back of the child's neck?

A. Yes, sir.

[fol. 418] Q. What if any thought processes do you think were going through his mind when he selected and used the knife?

A. The same thought processes.

Q. He intended to kill her, did he?

A. He did.

Q. And the selection and use of the knife on the child was a wilful, deliberate and premeditated act on Mr. Stroble's part, is that correct?

A. Yes.

Mr. Henderson: I have no further questions, your Honor.

Redirect examination

By Mr. Matthews:

Q. Doctor, it is still your opinion that this murder was committed as a result of panic and fear of detection, is that right?

A. Yes, that was his first act, his first thought.

Q. And that is when the murder was committed, in your opinion?

Mr. Henderson: Well, now, just a moment, your Honor, I will object to the form of that question.

The Court: That is a question of law, Mr. Matthews.

By Mr. Matthews:

Q. Is it your opinion that this murder was committed as a result of panic and fear of detection?

A. In part.

[fol. 419] Q. You mean you only put part of your opinion in your report?

A. No, I think all of my opinion is in my report.

Q. And when I read—

Mr. Alexander: Just a moment—

Mr. Henderson: He hasn't completed his answer yet.

Mr. Matthews: Your assistants will assist you, Doctor.

Mr. Alexander: Just a moment, I will object to that—

The Court: Now, Mr. Matthews!

Mr. Matthews: Yes, your Honor, I am sorry.

The Court: All right.

The Witness: No. I think that when the child screamed, and he choked her and she became unconscious, that was the fear and panicky part of this murder, but I think from there his emotions took different trends, but it continued to be fear during the necktie episode—possibly during one of the others, too, but eventually his attitude changed and he wanted the child's suffering to end. It then became an act of pity, from fear to pity.

By Mr. Matthews:

Q. Doctor, is it your opinion that if it is otherwise established that this child died of manual strangulation, that that act of strangulation by the defendant was not a premeditated act?

A. The strangling was not premeditated.

Mr. Matthews: No further questions.

[fol. 420] Mr. Henderson: We have no further questions, your Honor.

The Court: That will be all, Doctor. You will be excused.

Mr. Matthews: Mr. John Gray.

JOHN D. GRAY, having been first duly sworn as a witness on behalf of the defendant, was examined and testified as follows:

The Clerk: Your name, sir?

The Witness: John D. Gray.

Direct examination

By Mr. Matthews:

Q. Mr. Gray, you were not aware that you were going to be called this afternoon, were you?

A. Not until approximately an hour ago.

Q. And at that time, where were you?

Mr. Alexander: That is immaterial, if the Court please.

The Court: Objection sustained.

Mr. Matthews: Well, your Honor, since Mr. Gray is an attorney and he is here in court—I see that he has a necktie now—his sport outfit, I want to explain that.

The Court: If you are trying to explain his lack of sartorial elegance, I will allow you to do it.

[fol. 421] Mr. Matthews: All right, your Honor.

By Mr. Matthews:

Q. Where were you an hour ago, Mr. Gray?

A. I was at my office.

Q. And previous to that?

A. I had called in to get my calls and I had a call from the Public Defender's office requesting me to testify, out at Riviera Country Club, L. A. Open.

Q. The Los Angeles Open Golf Tournament, is that right?

A. That is right.

Q. Now, you are an attorney at law duly licensed to practice your profession before the highest courts in the State of California; is that right?

A. I am.

Q. Do you know Mr. Alexander and Mr. Henderson of the District Attorney's office?

A. Yes, I do.

Q. Did you have occasion to meet those gentlemen some time during the month of November, 1949?

A. I did.

Q. And do you remember where it was?

A. I first met Mr. Alexander and Mr. Henderson at the Wilshire Police Station, and that was, I believe, the night before Mr. Stroble was apprehended. It was November 16th.

[fol. 422] Q. Do you remember whether you had any—other than courtesies of the profession—whether you had any conversation with them in regard to the murder of Linda Glucoft?

A. The conversation that I recall with Mr. Alexander and Mr. Henderson—I saw them two places that night—once at the Wilshire Police Station, and at the Hausman home after that. At the Wilshire Police Station, as I recall, I was introduced to both Mr. Henderson and Mr. Alexander and I don't recall any other conversation that I had with them at that time.

Q. Now, on the 16th day of November, 1949, were you the attorney of record for Fred Stroble, the defendant in this case, on another sex offense charge?

A. Yes, I was, and I still am.

Q. Did you have any conversation with Mr. Henderson and Mr. Alexander directly about Fred Stroble on the 16th day of November?

A. I don't recall any conversation that I had concerning Stroble, either with Mr. Alexander or with Mr. Henderson. There was some conversation, but what it was, I couldn't say.

Q. Now, on the 17th day of November, 1949, in the afternoon thereof, did you receive a telephone call from one Reuben D. Hausman?

A. I did.

[fol. 423] Q. As a result of that telephone call did you go to the District Attorney's office of the County of Los Angeles located in this building, the Hall of Justice?

A. At Mr. Hausman's request I went to the District Attorney's office, yes.

Q. Did he direct you to do anything in particular?

A. He told me to—

Mr. Alexander: Just a moment, that would be hearsay, what he told him.

The Court: I don't think so, gentlemen. I think that the intention of the witness in going to the Hall of Justice may be shown, even though it depends upon a conversation.

The Witness: He told me to go up and see what I could do.

By Mr. Matthews:

Q. Did you do so?

A. Yes, I went to the District Attorney's office.

Q. Have you any idea about what time you arrived there?

A. Yes. I arrived there at 1:43 in the afternoon.

Q. Have you at any other time indicated that you arrived there an hour later?

Mr. Alexander: Just a moment, he is impeaching his own witness now, if the Court please.

Mr. Matthews: Just a minute, your Honor, I am not impeaching my own witness.

The Court: I think Mr. Matthews is right; I think the [fol. 424] principle of People versus Durant, 116 California, is employed here. Proceed.

Mr. Matthews: Go ahead.

The Witness: I would like to explain how I made an error; I made the error in time and I was an hour off.

Q. May I ask you this question, was there some peace officer who was kind enough to point the error out to you, without divulging his name?

A. Yes, there was.

Q. I see. You are certain in your mind now that you arrived there at 1:43 p.m., is that right?

A. Yes. I am now certain in mind, after that gentleman told me that I was all wet on the time element, I checked it with a bail bondsman who customarily comes to the floor at 2:00 o'clock; and he told me that he had seen me in there at the time that he came up, and another gentleman in the same occupation told me that. I also checked it from the time that I left the Biltmore Health Club where I was at the time—they keep a log down there where they check you out at the time you leave—and I left there, according to

their record, at 1:30; and I went immediately from there, I took a taxicab up to the Hall of Justice.

By Mr. Matthews:

Q. Now, when you went to the Hall of Justice, you arrived at the office of the District Attorney?

[fol. 425] A. I did.

Q. What did you do if anything when you arrived there?

A. Well, I went into their—into their entry hall and I talked to the girl at the desk and I asked her if I could see Mr. Alexander; and she said she would call in; and she appeared to call in, and I was told that I could not see him, that he was busy, he was in conference.

[fol. 426] Q. Did you identify yourself in any way with this girl?

A. I told her that my name was John D. Gray and that I was the attorney for Stroble.

Q. Incidentally, were there many—

A. Or she asked me if I was the attorney for Stroble.

Q. Anyway, that fact was established, is that right?

A. That's right, yes.

Q. Were there many people in the reception room of the District Attorney's office?

A. In the room where I was I think there were three or four people.

Q. I see. You asked for Mr. Alexander and were told he was in conference. Did you ask for any one else?

A. I asked for Mr. Henderson and she again appeared to call in and said Mr. Henderson was in conference and said he was busy and I couldn't see him.

Q. Did you then ask for some one else?

A. I asked to see Mr. Simpson and I—she again called in and I was told that he was busy and he was in conference and I couldn't see him. I then told her that I demanded the right to see Stroble and asked her to call that in. She appeared to do that.

Q. What did she tell you, if anything, afterwards?

A. She said that I could not see him.

Q. Now, about five minutes after you had arrived, did you

[fol. 427] have occasion to meet any police officer with whom you had a subsequent conversation?

A. Well, I saw Inspector Donohoe, he was in the corridor behind the place where the girls sit at their desks, and I motioned to him to come out and he came out and talked to me.

Q. Did he say anything to you?

Mr. Alexander: That would be hearsay, if the Court please.

The Court: You can answer that question, yes or no.

The Witness: Yes.

By Mr. Matthews:

Q. Did you inform him why you were there?

A. I told Inspector Donohoe that I was there to see Stroble.

Q. What did he say to you?

Mr. Alexander: That is hearsay—I will withdraw the objection.

The Court: You may answer.

A. Mr. Donohoe told me that I wouldn't be able to see him or that I might be able to see—just let me start again—Mr. Donohoe, when I first talked to him, I asked him to see Mr. Alexander and I told him I wanted to see Stroble and he said that I probably wouldn't be able to see Stroble, but that I might be able to see Mr. Alexander in half an hour or an hour; but, he said, "Why don't you go on home [fol. 428] and come back tomorrow, and let's do this thing right?"

Q. What did you tell him?

A. I told him that I was going to stay there until I saw Stroble.

Q. Did you ask him—well, you have already gone into that.

All right, Inspector Donohoe left, did he not?

A. Then he went back inside in the corridor there.

Q. What, if anything, did you do thereafter?

A. Well, I asked the girl from time to time to call in and I demanded to see him, I guess on four or five or six differ-

ent occasions after that time. I would ask her if they knew I was there and she told me that they did.

Q. Do you remember whether she indicated to you that you couldn't go in, that you couldn't see him?

A. Well, the door is locked. They wouldn't open it for me. I wanted to get a drink of water—I had a bad cold that afternoon and I had to go all the way down in the Record Bureau to—

Q. Now, did you see Fred Stroble there in the District Attorney's office that afternoon?

A. Yes, I did, I saw him when they brought him by to take him to Dr. Crahan's.

Q. Well, was he accompanied by any one?

A. Well, there was—he was accompanied by—he was [fol. 429] flanked on either side by two men. I didn't notice who they were, I was looking at him; and there was—there must have been 40 or 50 or 60 people who came out at the same time. It was just a rush through there.

Q. Were you allowed to communicate with him?

A. At that time?

Q. With Fred Stroble, yes.

A. No, they rushed him right by.

Q. Did you thereafter see Mr. Adolph Alexander of the District Attorney's office?

A. After Stroble had been taken to the elevator I saw Mr. Alexander in the corridor and he came over to the door and I talked to him at the door.

Q. What if anything did you say to him and what did he say to you?

A. I asked him why I hadn't been allowed to see Stroble and he told me that they were in conference and couldn't be interrupted, and, I believe, that it was normal procedure.

Q. Did you thereafter talk to Mr. John Barnes, the Assistant District Attorney of this County?

A. Mr. Alexander introduced me to Mr. Barnes at that time, yes.

Q. Did you make any inquiry of Mr. Barnes?

A. Yes. I asked Mr. Barnes why I hadn't been allowed to see Stroble.

[fol. 430] Q. Did he make a reply?

A. He told me that they had been in conference and couldn't be interrupted, and I said, "Well, I have a right

to see him," and he said, "No, you don't have any such right."

Q. Did you see Fred Stroble and talk with him that day?

A. Yes, I did.

Q. What time was it?

A. It was approximately 9:30 in the attorney's room up in the County Jail.

Q. At 9:30 in the evening?

A. That is right.

Mr. Matthews: You may cross examine.

Mr. Alexander: Now, if the Court please, may we approach the bench a moment?

The Court: Yes.

(Whereupon a colloquy was had between the Court and counsel at the bench outside the hearing of the jury and the court reporter.)

Cross examination

By Mr. Alexander:

Q. Mr. Gray, my first contact with you was the night of November 16th, 1949, at the Wilshire Station, is that right?

A. Yes, sir, that is right.

[fol. 431] Q. At that time you were with Reuben Hausman and Freddy, is that right?

A. That is right.

Q. And I was with Inspector Donohoe, Fred Henderson, Sergeant Brennan and Tullock, is that right?

A. I remember Inspector Donohoe and I saw Sergeant Brennan so many times around that time that I don't remember whether he was there. I believe he was. I know you and Fred were there.

Q. And can't you remember any conversation you and I had at that station house in the presence of Fred Henderson?

A. The first that I recall that took place when I got there, I was introduced to you gentlemen and I believe some one said that I was the attorney for Stroble or that—in a misdemeanor case—

Q. That is right.

A. —and I believe that then you asked Mr. Hausman and myself to go into the next room while you talked to Freddy, and we did.

Q. Don't you remember, Mr. Gray, telling Mr. Henderson, me, Donohoe, Brennan and Tullock that your client is Mr. Hausman; do you remember saying that to us?

A. My client is Mr. Hausman.

Q. All right. Do you remember telling us that?

A. That I represented Mr. Hausman?

Q. Yes.

[fol. 432] A. Yes, yes, I did.

Q. All right. And do you remember, or isn't it a fact, Mr. Gray, that you told us that you do not represent Stroble on the murder charge and under no circumstances will you represent him on that murder charge?

A. Mr. Alexander, I don't remember saying that, at that time?

Q. Do you remember saying that at any time?

A. Yes, yes, I do, I did say it.

Q. When do you remember saying that?

A. I don't remember the time that I first said that. I believe—it is my recollection that I first said that after Stroble had been apprehended.

Q. Isn't it a fact that after we left the Wilshire Station and we went to the home of the Hausmans, you, that night, were in front of the Hausman home with Brennan and Tullock and there again you made that statement?

A. To be honest with you, I don't remember even being in front of the Hausman home. It is my recollection, Mr. Alexander, that the night that you were out at the Hausman home on November 16th we were in the living room and that you gentlemen left and I didn't—I am sure that I stayed there after you gentlemen left. I stayed in the house. Do you mean before we got there?

Q. Don't you remember we arrived at different times at the Hausman home?

[fol. 433] A. Yes, you were in the house when we arrived.

Q. And weren't you talking to Brennan and Tullock outside at all that night?

A. I don't recall talking to them outside.

Q. Can you deny you made that statement in substance to them that night, is that right?

A. No, I don't that night, Mr. Alexander. I don't know for sure. I don't have a definite recollection.

Q. You may have told them that night; is that right?

A. It is possible that I said that that night.

Q. All right. Now, Mr. Gray, the following day you met me coming out of the District Attorney's office after Stroble was taken away, is that right?

A. Yes, that is right.

Q. Was I alone then or with some one else?

A. As I recall you were with Mr. Barnes at that time. I think that is the time that you introduced me to Mr. Barnes.

Q. Barnes or Mr. Roll, which?

A. Mr. Roll was there, I recall seeing him.

Q. Do you recall Chief Deputy Roll and I were coming through the door and you were there and I introduced you to Chief Deputy Roll?

A. Yes, that is right.

Q. Then Chief Deputy Roll and I took you back to the office of the Assistant District Attorney Barnes, isn't that [fol. 434] the way that happened?

A. I don't recall that way. I thought that Mr. Barnes was also out there by the door. It seems to me that I went back with you and with Mr. Barnes.

Q. Don't you remember Chief Deputy Roll telling you something about being a witness at Court Martial of his?

A. I told him that, he didn't remember me.

Q. Barnes was not there at the time, was he?

A. I don't recall.

Q. Well, you recall Mr. Roll and I took you back to Mr. Barnes' office and you used Mr. Barnes' telephone, didn't you?

A. Oh, yes, I did.

Q. In his private office?

A. Yes, I did.. Mr. Barnes took me into the office.

Q. That is right.

A. And left me alone.

Q. Mr. Barnes—and I introduced you to Mr. Barnes, is that right?

A. I remember you introducing me to Mr. Barnes.

[fol. 435] Q. Don't you remember at that time you stated to me and Mr. Roll that the only reason you are here is to

make certain for yourself that Stroble is guilty of this, and if he is, you and Hausman will have nothing to do with him; do you remember that statement in substance?

A. No, I don't remember that statement in substance. I remember making the statement that Mr. Hausman had sent me down there to talk to Stroble.

Q. Didn't you say that?

A. I said that if Mr. Hausman was satisfied that Stroble had committed this fact that he would not defend him.

Q. And you were there for the purpose of finding out whether or not that was so, isn't that right?

A. I conceived that my duty as his attorney of record would be somewhat stronger than that, Mr. Alexander.

Q. Well, Mr. Gray, you never did appear as attorney of record?

A. In the murder case?

Q. In the murder case.

A. No, I did not.

Q. At no time?

A. No, I did not.

Q. You never made any appearance whatever for him?

A. In the murder case—

Mr. Matthews: Just a minute. He made an appearance [fols. 436-37] at the District Attorney's office.

The Court: Well, I think the word "appearance" is pretty well known and it is understood as to what is meant by it.

Mr. Matthews: All right, your Honor.

A. No, I did not make an appearance for him in the murder case.

By Mr. Alexander:

Q. Now, isn't it a fact that you told Mr. Barnes, in Mr. Barnes' office, that you will not defend Stroble; that is, in substance—that you will not defend Stroble and that you were there just to find out whether he was guilty or not so you could report it back to Hausman; didn't you tell that to Assistant District Attorney Barnes?

Mr. Matthews: I object to that question on the ground it is not proper cross-examination, and it is irrelevant, and

from what Mr. Alexander says Fred Stroble had left the building so this is not proper cross-examination as to the time.

The Court: Well, I think it is proper on the subject matter, because the direct examination is likely to leave the impression that Mr. Gray was there as attorney for Mr. Stroble.

Mr. Matthews: That is right, your Honor.

The Court: I think the entire situation as it existed, particularly in fairness to Mr. Gray, should be brought out so [fol. 438] his position may be understood.

Mr. Matthews: Will you read the question, please?

(Question read.)

A. Well, Mr. Alexander, I don't recall the exact conversation that I had with Mr. Barnes, other than what I related on my direct examination and which I wrote down afterwards. I recall making a statement around that time that I would not defend Mr. Stroble and I stated my reasons for that—that I have a civil practice, I don't defend criminal matters ordinarily, other than a few minor violations which I have taken care of for clients of mine, but that I would associate an experienced counsel who was accustomed to trying criminal matters, if Mr. Hausman so desired.

By Mr. Alexander:

Q. Now, you did not say that to us on the 16th, did you?

A. Oh no. We were interested in finding him at that time.

Mr. Alexander: That is all

Redirect examination

By Mr. Matthews:

Q. Now, Mr. Gray, you know that attorneys have the privilege of changing their minds, don't you?

Mr. Alexander: Just a minute. That is immaterial.

By Mr. Matthews:

Q. Now, when Mr. Hausman directed you to go down to [fol. 439] the District Attorney's office and represent Fred Stroble, did you do your duty—

Mr. Alexander: Just a minute.

The Court: That is assuming something that is not in evidence.

Mr. Matthews: I think he testified that Mr. Hausman communicated with him by telephone and directed him to go down to the District Attorney's office and represent Fred Stroble.

The Court: No, I don't think the testimony went that far.

By Mr. Matthews:

Q. Mr. Gray, will you relate that telephone conversation that you had with Mr. Hausman?

A. Mr. Hausman told me that he had been informed that Stroble had been picked up and that he had been taken to the District Attorney's office and he told me to go up there and do what I could.

Q. And if you had seen Mr. Stroble what would you have told him?

Mr. Alexander: That is immaterial and purely a hypothetical question.

The Court: Objection sustained. It is purely a hypothetical question.

By Mr. Matthews:

Q. Do you remember the question the court asked you—what you said as to what you might say to Mr. Fred Stroble?

[fol. 440] A. I do.

Q. And what did you reply?

Mr. Alexander: Just a minute. That is immaterial.

The Court: Objection sustained.

By Mr. Matthews:

Q. When you were down to the District Attorney's office what was it your intention to do as an attorney?

Mr. Alexander: That is objected to as immaterial.

Mr. Matthews: Just a minute. Let me finish.

Q. As an attorney?

Mr. Alexander: That is immaterial what his intention was.

The Court: Well, I think I will permit an answer. I am somewhat in doubt on the question, but I will permit an answer.

Mr. Matthews: Go ahead.

A. When I went to the District Attorney's office I went there to advise Stroble of his constitutional rights.

Mr. Matthews: No further questions.

Recross-examination

By Mr. Alexander:

Q. Mr. Gray, do you remember the other day you and I had a little talk and I said to you, "John, I was the most surprised guy in the world when you took the stand here the other day"?

[fol. 441] A. Yes, I do.

Q. You remember I said to you, "I was the most surprised man in the world when you testified the way you did"?

A. Yes.

Q. Then I said to you, "John, you know you never said anything like that," or rather, I said to you "John, you know that you had no intention of defending Stroble and that you told us that the night before and the day Stroble was picked up." Do you remember I said that to you?

A. Yes, I recall that.

Q. Do you remember my saying that to you and you saying "Well, Alexander, I probably would have said anything to you just to get in to see Stroble"? Do you remember that?

A. Yes.

Q. You did say that, didn't you?

A. Say what you just said to me?

Q. Yes.

A. Yes, I said that.

Mr. Alexander: That is all.

Redirect examination

By Mr. Matthews:

Q. And, Mr. Gray, once you went to the District Attorney's office and realized the only way you could see Fred [fol. 442] Stroble by any means was by some ruse—

Mr. Alexander: Just a minute. I object to that.

Mr. Matthews: Just a minute. Let me finish.

Mr. Alexander: All right, ask your question and I will object.

By Mr. Matthews:

Q. Incidentally, when you talked to Mr. Alexander did he acknowledge that he had received a telephone call from you?

A. I don't recall.

Q. Did he acknowledge that he knew you were outside waiting to go in to see Fred Stroble or was it something all new to these boys?

Mr. Alexander: Let him answer!

The Court: Well, that last question calls for the conclusion of the witness. Objection sustained to that.

Mr. Alexander: May we have an answer to the first part of the question?

The Court: I am not sure what the first question was.

Mr. Alexander: Whether I told him I knew he was waiting for i.e., or words to that effect?

The Court: Yes, you may answer that.

The Witness: Would you read back the question?

The Court: Did Mr. Alexander tell you when you did see him on the afternoon of the 17th that he knew that you had been waiting for him?

A. No; I don't recall him telling me that, no. Was that [fols. 443-475] the question? I thought the question was when he talked to me the other day.

Mr. Matthews: All right, thank you.

Q. In your conversation with Mr. Alexander when he told us that you told him that all you wanted to know was whether Fred Stroble was guilty or innocent and if he were guilty you would not defend him—did he tell you why, knowing that fact, he did not admit you to the District Attorney's office to talk to Fred Stroble?

A. No.

Mr. Matthews: No further questions.

Mr. Alexander: When was this supposed to have taken place?

Mr. Matthews: The night before, according to you.

The Witness: It was my understanding of this question that this took place at the time that I talked to Mr. Alexander outside of the office after Stroble had been taken away.

Mr. Alexander: After Stroble had left.

The Witness: Yes.

[fols. 476-478] DR. JACOB PETER FROSTIG, having first been duly sworn as a witness on behalf of the defendant, was examined and testified as follows:

The Clerk: Your name, please.

The Witness: Jacob Peter Frostig.

Direct examination

By Mr. Matthews:

[fols. 479-490] Q: Now, Doctor, have you had occasion to examine the defendant in this case, one Fred Stroble?

A. Yes, I did, on the 31st of December, 1949.

[fol. 491] By the Court:

Q. Did you ask him about the killing?

A. Yes, sir.

By the Court:

Q. What did he say?

A. I asked him then, and then he started with the story,

because I did not interrupt him since that time, and I let him ramble around and see how his speech is and then that is what he told me.

Mr. Matthews: Go ahead with what he told you after [fol. 492] you asked him that question.

A. Then he gave me the story of when he came back from Mexico around Thanksgiving Day, in November, and he stayed at his son-in-law's home and as always he played with the little girls around and then he took the Glucoft girl into the bedroom and played with her sexually. She screamed and he got into a panic. I could not get the exact and clear sequence of the happenings; not having his confession to compare I was not able to check on what he said, but as I understood, he first tried to strangle her and then his story got more garbled; he told me about the axe and the knife and the pick and the tie. All of the time he said she was in a panic. I asked him whether they were all in one place and, no, he had to run forwards and backwards for that. That is a very peculiar behavior in my opinion as far as that specific type of killing is concerned.

Mr. Alexander: I ask that that be stricken.

The Court: It may go out as not responsive.

By Mr. Matthews:

Q. What is your opinion, Doctor?

The Court: Just a minute, let the Doctor finish his story; he was asked to tell what was told him about the killing. Let's get that.

A. He then told me about how he went away and went to Venice and tried to commit suicide; but there were too many people around and he went twice to town and twice to [fols. 493-528] Venice. And he took a lodging under another name. Then there is where he got very much rambling about where he went and where he was or wherever he ate, and so on, and finally he told me the story about Pershing Square and the way he was arrested.

[fols. 529-597] CARL G. G. PALMBERG, having been first duly sworn as a witness on behalf of the defendant, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: My name is Carl G. G. Palmberg.

The Clerk: Palmberg (P-a-l-m-b-e-r-g)?

The Witness: That is correct, sir.

Direct examination

By Mr. Matthews:

Q. Mr. Palmberg, what is your business or occupation?

A. I am a clinical psychologist, Mr. Matthews.

[fol. 598] Mr. Matthews: Did you have a further conversation with Mr. Stroble?

A. Did I have a further what?

Q. A further conversation with Mr. Stroble in which he related his life history to you?

A. Yes, I did.

Q. Did you have a further conversation with Mr. Stroble [fol. 599] pertaining to the killing of a little girl?

A. I did.

Q. Now, did you have a further conversation with Mr. Stroble pertaining to his drinking habits?

A. That was included in the previous conversation concerning the life history.

Q. And in particular, did you have a conversation with him as to whether he had drunk any liquor on the 14th day of November, 1949?

A. He communicated that spontaneously in the discussion of the act that occurred on that date.

Q. Now, in the light of the Rorschach test, the life history that was given to you by Mr. Fred Stroble, and the facts that he related to you in connection with the killing of a little girl, did you come to an opinion as to whether or not Mr. Stroble had the capacity to premeditate or deliberate in the formation of an intent to kill this little girl, the details of which he related to you?

Mr. Alexander: To which I object on the ground that no proper foundation has been laid.

The Court: At the present time we have not the slightest idea what the witness would predicate his answer on because we don't know what was told to him in his conversation.

By Mr. Matthews:

Q. Now, you say that Mr. Stroble related his life history to you?

[fol. 600] A. That is correct.

Q. Will you give us the substance of that?

A. I shall to the best of my recollection.

Q. Have you any notes?

A. I have no notes on the subject.

Mr. Matthews: All right, go ahead—have you a recording?

A. I have no recording. Yes, I do, but it is a rather poor recording. However, I have one.

Mr. Matthews: I see. Go ahead.

A. In regard to his life history Mr. Stroble related having been born in Vienna and growing up in that city up until the age of approximately 11, being the 4th—right in the middle—of a family of eight, the father of which died and the mother later remarried. At the age of 11 Mr. Stroble was sent to a farm or country home of an uncle where he was reasonably comfortable but not so comfortable as he had been at home in Vienna. The living conditions were not quite luxurious and he did not feel quite so much at home at the farm as he had at home in the city. He was obliged to work very hard on the farm, a thing that he enjoyed in some respects, but he appeared to feel that this was something of a strain, as he often had to work on Sunday when the rest of the family went in to church, to Mass. At a later age, I believe 16 or 17, he left the farm and traveled in various directions seeking employment at [fol. 601] a number of occupations, I believe that he was engaged in part in making sausages. However, in the process of this he did mention to me in considerable detail and with some feeling, his experience in having had a fever

which he described as rheumatoid or rheumatic type of fever, although of course I have no first hand knowledge—no knowledge from him and I am sure he probably does not know for sure whether this was or was not the exact ailment diagnosed as rheumatic fever or even if it was exactly rheumatoid arthritis. He spoke in great detail of having a tremendous fever and of being placed in the hospital and having the sisters attend him—and by sister I mean the Austrian nurses—day and night, and being immersed in ice water or ice packs at different times to reduce the fever. It was quite a prominent event for him, and he spoke of being sickly and having quite a number of various ailments none of which, except the rheumatic fever, he described with so much detail or with any great degree of specificity. He passed over rather briefly his search for various types of employment and occupations and he mentioned the fact that, feeling hard up and wondering what he should do for a life work, he finally got a job as a steward's assistant, or steward's mate on board ship and made several voyages and eventually wound up in the United States.

And in New York the opportunity came to him after a period of time to learn the baking trade, as sausage making [fol. 602] or sailing around without any respite, were not too much to his taste.

He enjoyed the baking trade and he especially admired the men who taught it to him. He found employment for himself, special occasions, bakeries—by special occasions I mean baking special orders for parties and banquets. He worked as a hotel baker for some time, and after awhile got to do regular baker's work.

He later on came out to California, having come out, I believe, to the San Francisco Exposition, World's Fair some time ago, I don't remember the exact year, and on the way back he decided to return by shipboat—by steamboat; [fol. 603] and on board the ship which passed through the Panama Canal he met his wife-to-be, and after eleven days of this voyage and a rather good time in the Canal Zone, which included I was given to understand an alcoholic good time as well, he and his bride were wedded and they returned to New York. He found out at that time that she had a previous nervous break down, the extent of which he did not specify.

As I say, he later came out to California, was never completely happy according to his narrative with his wife, never knew when to expect one of her outbreaks which appear to be periodic but found great satisfaction and comfort and conciliation in his work. He stated that was the one thing that he found was stable and could count on. So he never knew or had any way of being able to anticipate what would happen when he came home from work, whether his wife would welcome him home or would even attack him physically, what her mood would be and what the reception would be he would receive on returning home.

He indicated to me that during his early life he was abstemious in his habits, using alcoholic beverages only to the extent that one might use a table beverage. He emphasized this particularly in regard to the fact that he did not drink in the shop or on the job. He stated that around the ovens there or in the bakery there were quite a number of bakers that were given to carrying wine with them or [fol. 604] passing wine around. However, Mr. Stroble states that he did not accept such offers of wine and when it was passed out on an all-around basis he would give his portion to somebody else.

He dwelled at some length in a very repetitive fashion, not giving too much additional data but going over previous material on his work satisfactions at the bakery and tended to date in his narrative his difficulties with termination of his employment; and he felt that it was after that that he began to drink in earnest and he attributes his drinking to feeling lost, not knowing what to do with himself, feeling so to speak left out. I don't know that those were his exact words, but that was the meaning that they conveyed to me. And he stated also that it was about the same time that he began to continue drinking, that it was not possible for him to refrain from episodes in which he fondled little girls. I think he used the exact term "play with little girls," and with some inference that there was some type of manual contact involved.

He continued that discussion, that of his life history up to that point; and then I was separate from him for a period of time, an hour or more, and then later on he did

discuss with me more specifically the events that related to the killing.

Q. Well, will you continue?

[fol. 605] A. Yes.

Q. Let's assume that is part of the life history, up to the time you met him. Continue.

A. That is right. Well, he started the story of the killing—another witness mentioned the word “circumstantial”—he started the story of his life—I mean of the killing with his first arrest, or rather his previous arrest of last May; and he mentioned his feelings of anxiety and the likelihood of disgrace and threat of punishment.

Mr. Alexander: May we have the conversation, please, your Honor, as close as possible.

The Court: Yes.

Mr. Matthews: You have to give us what he said.

The Court: In other words, merely referring to subject matter doesn't give us the conversation.

Mr. Matthews: You have to tell us what he said—or did I misunderstand the objection, Mr. Alexander?

Mr. Alexander: No, you are right, Mr. Matthews, just what he said.

Mr. Matthews: Just what he said. We don't want your interpretation of what he said, we want as near as you can give us what he said.

The Witness: All right, I shall do that.

Mr. Matthews: I don't mean sentence for sentence, but I mean what he said, not what you felt about what he said.

[fol. 606] The Witness: All right. I am afraid that is an occupational vice, and I will try and govern myself accordingly.

Mr. Matthews: Thank you.

A. Well, he spoke of his previous arrest, and he spoke of deciding to jump bond; he spoke of going to Mexico, and on my questioning him as to why he thought he ought to go to Mexico and jump bond he stated that he was very much afraid to remain around after that, that he was afraid of disgrace for the family involved in any action being followed up, and he was afraid of consequences to himself,

he was afraid of what would happen to him; but what that was, he did not specify.

He said that from the time of his first arrest up until the time our conversation, but more especially up until the time of his most recent arrest, he was not at any time without fear. He expressed that very emphatically, he was extremely worried, he said, and he also stated that he was worried on the one hand that officers in the United States would apprehend him; he stated that he saw circulars containing his picture and description circulated in a very general way and even in the hands of railway porters. And he stated that had he not run low on money it would have been better had he not returned from Mexico. He stated however that not only did he return from Mexico, having [fol. 607] once jumped bond for the reasons that he assigned and that I have previously mentioned—he felt a strong urge to visit with his family again. He felt extreme loneliness for his family and he stated that he really needed the reassurance of seeing them again, requesting their help, and getting extra clothes, and as occasion demanded on some of these trips back and forth, money. He spoke with particular feeling on one occasion of being confronted with his daughter and her question as to the amount of money that he had. He stated that he had plenty of money and she demanded to see his wallet and took it from him, opened it, found \$30.00, and forced on him an additional fifty. Thereafter he disappeared. He stated that he drank a great deal in Mexico and that he gambled also, went to the races; he stated that he did so also when it was possible on his visit back to the United States, but despite all these gambling, drinking, et cetera activities, he was not for a moment without a feeling of fear. He then came back on this final occasion, he related the matter of mixing a number of drinks for himself in the house when he returned to the house, he related his conversation with his son-in-law and his son-in-law Ruben Hausman's advice that it would be much better for all concerned if he would give himself up to the law and proceed in that manner. He admits and states that he did inform his son—pardon—son-in-law that that was to be his plan of action; and he states further [fol. 608] that he left, but did not follow through. He

related the sequence of the neighborhood children being around, stating that they had missed him, asking him why he kept going away all the time, and why he did not remain there. He mentioned the sequence of events in which his daughter requested him to look after the evening meal while she was away; the party in which he had been requested to buy ribbons for Rochelle when Rochelle went to the party. He requests the leaving of those people—he relates, rather, the leaving of those people; of the arrival of Linda Glucoft and of conversation that took place between them to the effect that, “Why didn’t they play together in the yard?” His insistence, according to his statement while intoxicated, that they play together in the bedroom instead and the subsequent events in which he drew her to him, in which he touched her—he did not expand that point particularly—in which he placed her on the bed and, in which she began to object and say, “No, I want to go outside,” and asked insistently for Rochelle and possibly the other children—I don’t remember that she specifically asked for the other children, but I know that she asked for Rochelle.

He did not describe the killing itself in such great detail. He described a little bit of his personal feeling about the matter.

He stated that he was surprised, astonished and violently upset when she started to make a noise. [fol. 609] He admonished her to be quiet, and then she screamed very, very loud. He said that he was even more surprised, shocked, and upset when he found almost—I think he mentioned the idea as if another person were doing it—

Mr. Alexander: I will ask that that be stricken, if the court please.

The Court: That is the witness’ conclusion; we want the conversation. Please relate the conversation, Mr. Palmberg.

Mr. Hill: May we have that repeated, if the court please? As I get it that was a recital of what the defendant was saying to him.

The Court: No, as I got it the witness was putting his own conclusion in.

Mr. Hill: No, sir. The witness did make—

The Court: Give us again, limiting yourself to what he said—

The Witness: I was doing that, your Honor, in this particular matter, too. The subject, Mr. Stroble, the defendant, did make that statement, that he felt he was astonished to find that he was doing and had done such a thing when she started to scream and that in thinking of it afterward he was, felt as if another person was doing and had done it, that it was not like him.

By Mr. Matthews:

Q. Are you through?

[fol. 610] A. He then went over briefly the subsequent events.

Q. Let's have that relation.

A. I am about to do that. He mentioned just as briefly as he could—

Mr. Henderson: Your Honor, may we have the conversation about the subsequent events in the words of the defendant as nearly as possible?

The Court: Yes, I think the witness is intending to do that. However, just keep that in mind, Mr. Palmberg.

A. I will, your Honor.

He went over them as briefly as possible and I shall try to relate them.

He said that when he saw that it was of no use—she was done for—then he was at a complete loss and all he could do or think of was that she should not suffer any more. He related that he had obtained the various instruments, namely, the ice pick, the knife, the axe, the necktie, not necessarily in that order,—in fact, I believe the necktie came first—and had applied them.

He stated that he had done so. He stated that he was in a state of complete terror at that time. I asked him specifically the source of his terror, why was he frightened when Linda screamed. What was the reason? He gave two reasons. He said that not only would the police arrest him, but that the neighbors were—as he was—extremely fond of those children and that he could anticipate any [fols. 611-768] conceivable kind of treatment from the neighbors were the neighborhood to be aroused and respond to her cries for assistance. He did not go into further de-

tails other than that he had used these instruments. He then stated that he took himself away to Ocean Park and that he had had some further drinks down there and that he intended to commit suicide but that he had decided that because of possible punishment on the other side—and I understood him to mean in a future state after death—he had better not commit suicide. He stated that he returned eventually after having taken for a time this room in Ocean Park, to Los Angeles, to give himself up, and that he had intended to phone Mr. Van de Kamp, and his daughter or son-in-law, and summon the police and was in the process of fortifying himself with alcohol at the time of his apprehension.

[fol. 769] S. ERNEST ROLL, called as a witness on behalf of the People, in rebuttal, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: S. Ernest Roll.

Direct examination

By Mr. Alexander:

Q. Mr. Roll, you are the Chief Deputy District Attorney of Los Angeles County, are you not?

A. I am.

Q. And were you such on the 16th—on the 17th of November, 1949?

A. That's correct.

Q. Mr. Roll, some time in the afternoon of that day do you remember an occasion when you and I and an attorney by the name of Mr. John Gray were together?

A. That is correct.

Q. Where was that?

A. At the entrance to the District Attorney's office was where I first saw him that day, on the 6th floor of this building, the Hall of Justice.

Q. Did anybody introduce you to Mr. Gray?
[fol. 770] A. I had met him previously and he spoke to me.

Q. You had a conversation with Mr. Gray in my presence at that time, did you?

A. That is correct.

[fol. 771] The Court: May I have the date once more, please?

Mr. Alexander: The 17th of November, 1949.

The Court: Very well.

By Mr. Alexander:

Q. At that time and at that place did Mr. Gray say to you in substance—

Mr. Matthews: Now, your Honor—

Mr. Alexander: Would you rather have the conversation, Mr. Matthews?

Mr. Matthews: I would prefer that.

Mr. Alexander: Very well, that is agreeable.

Q. Mr. Roli, can you relate in substance—

Mr. Hill: We object to that as not rebuttal.

The Court: Then we will have to go back and have the regular procedure and ask him on impeachment.

Mr. Alexander: That is what I thought—I thought Mr. Matthews wanted me to proceed this way.

The Court: That is what I understood, but that is evidently not what they intended to say.

Mr. Alexander: All right, we will go back.

Q. Now, at that time and at that place did Mr. John Gray in substance say to you that he did not represent the defendant, Fred Stroble, that he represented Mr. Hausman, and that the Hausmans had heard that Stroble had confessed and he was there just to find out from Stroble if this was true?

A. That is what Mr. Gray said at that time.

[fol. 772] Mr. Alexander: You may cross-examine.

Cross-examination

By Mr. Matthews: _____

Q. Mr. Roll—now, this may be beyond the direct, so I want to call the Court's attention to it—Mr. Roll, have you a secretary, private secretary?

A. Yes.

Q. And if a telephone call is made from the front desk of the District Attorney's office and a request is made to see you, how is that handled?

A. Well, sometimes I pick the phone up myself and sometimes she picks it up. If she picks it up, why, if I am not busy sometimes I give instructions, Mr. Matthews, that I am tied up with a conference and to take no phone calls, and if I am in the office, why, she rings a buzzer from her phone into my office and says so and so was on the telephone, and so and so is out at the front desk, do you want to speak on the phone, or do you want to see one on the front desk?

Q. Now, can you tell us how a call would be handled usually if the girl at the desk knew that you were in conference in the office, main office of Mr. Simpson, the District Attorney?

Mr. Alexander: Wait just a moment. May I have that question again, please?

[fol. 773] (Question read by the reporter.)

The Witness: Now, you are speaking about the girl at the main desk or my secretary?

By Mr. Matthews: _____

Q. No, I am speaking—suppose I walk into the District Attorney's office and I say I want to see Mr. Roll, or I want to speak to Mr. Roll and the girl already knows that you are in with Mr. Simpson?

A. Well, the girl at the main desk very seldom knows where I am. What she does when some one comes in to the desk is get hold of my secretary. My secretary tells her where I am.

Q. Do you think it might be an unusual circumstance—

under which it was known that you were in conference with Mr. Simpson—

Mr. Alexander: Now, if the court please—

The Court: I think it is quite possible the receptionist at the outer desk might know there was a conference on in Mr. Simpson's office.

By Mr. Matthews:

Q. Assuming then that the girl did know there was a conference on in Mr. Simpson's office, was the usual procedure to phone your secretary or to phone Mr. Simpson's secretary?

A. Well, it varies. Sometimes they phone me. Sometimes they phone the secretary. Sometimes they might put the call in to Mr. Simpson's office. We would have it both ways.

[fol. 774] Q. What is the name of your secretary?

A. My secretary, Mildred Evans.

Q. And you have been in conferences with Mr. Simpson and have you received calls in there while you have been in conference with Mr. Simpson while you have been engaged in the District Attorney's office?

A. Oh, yes.

Q. How is that usually handled?

A. Why, it will vary. I think I have a smart secretary, Mr. Matthews, and sometimes depending on who the individual is she may know that I have left word that I want to see the individual; if there is a phone call that the person is out at the desk, she will come in and tell Mr. Simpson's secretary that so and so has arrived and his secretary in turn will buzz me and if it is a time at which I can leave, I leave. Now, that is one way that it is handled.

Q. You give your secretary the discretion of refusing to communicate with you when she thinks that it is unwise to do so?

A. No. As I say, I have a girl I think that understands public relations in handling the public. My office is usually open, Mr. Matthews, when I am not busy; but I can't talk to more than one person at a time.

Q. Mr. Roli, I would agree with you, I think your secre-

tary is smart—that is the very reason I am asking you [fol. 775] whether you have given her discretion when a call comes in for her to say, "Well, he is in conference," or something, without communicating with you to let you know that that call has been made?

A. Sometimes Mr. Simpson will phone and ask me to come in the office, say there is going to be a conference and be tied up for twenty minutes, I don't want to be disturbed; in an example like that I will tell my girl I will be tied up for twenty minutes, take the calls, write them down, or hold any people at the desk that may be out there.

Q. Now, on the afternoon of November 17th what instruction did you give your secretary in regard to calls?

A. I don't believe I gave her any.

Mr. Matthews: No further questions.

Mr. Alexander: Thank you, Mr. Roll.

Mr. Barnes, please.

JOHN BARNES, having been first duly sworn as a witness on behalf of The People in rebuttal, was examined and testified as follows:

The Clerk: Your name, sir.

The Witness: John Barnes.

Direct examination

By Mr. Alexander:

Q. Mr. Barnes, you are the assistant district attorney [fol. 776] of this county, are you not?

A. I am.

[fol. 777] Q. And was that your position on the 17th day of November, 1949?

A. It was.

Q. Some time in the afternoon of that day, Mr. Barnes, did Mr. Roll and I come into your office with a man by the name of John Gray?

A. You did.

Q. And did I introduce you to Mr. Gray?

A. You did.

Q. After introducing you to Mr. Gray I left the office, did I not, to get some lunch or something?

A. That is correct.

Q. Did you have a conversation with Mr. Gray?

A. I did.

Q. Will you relate in substance, please, the conversation you had at that time?

A. In substance Mr. Gray said as follows:

"Where is Mr. Stroble?" Or, "I want to talk to Mr. Stroble."

And I said, "I don't have Mr. Stroble, he is in the custody of the Police Department."

I said, "May I ask you, have you been employed to represent Mr. Stroble in this matter?" Referring to the murder of the little girl.

He said, "No."

Mr. Hill: Pardon me, just a minute, Mr. Barnes. We [fol. 778] object to the offer of this testimony by way of rebuttal by reason of the fact that a perusal of Mr. Gray's answer and testimony in answer to Mr. Alexander's cross-examination on Page 438 beginning at line 4 does not require anything by way of rebuttal.

Mr. Alexander: If your Honor please, may I refer to Page 429?

The Court: Mr. Alexander, I think the difficulty probably is instead of asking the regular impeaching questions substantially in the form that were put to Mr. Gray, you asked for the conversation. I think if you will ask the same question, the same material in the form of a question, to Mr. Barnes, we will be proceeding with all technical accuracy. In other words, did Mr. Gray at that time state—and then put to Mr. Barnes the same question that you asked Mr. Gray as to whether he did so state.

Mr. Alexander: Your Honor, with all due respect to your Honor, may I be heard a moment? In the testimony of Mr. Gray he related a conversation that he had with Mr. Barnes and we are now attempting to introduce that conversation.

The Court: I had overlooked that.

Mr. Alexander: On Page 439, line 24.

Mr. Hill: I might state that Page 438 is the only foundation laid for possible rebuttal.

[fol. 779] The Court: What is that page again?

Mr. Alexander: Page 429 beginning with line 22.

The Court: Objection overruled.

Mr. Alexander: Now, will you relate the conversation, Mr. Barnes, please?

A: I had started. May the reporter give me the context?

Mr. Hill: We object to the conversation.

The Court: The Court's ruling is predicated on the fact that Mr. Gray related a part of a conversation and his version of the conversation, and I think the District Attorney is entitled to give his version of the conversation and such other portions of the conversation as might shed light on what is already in the record.

The Witness: May I have the context? I had given a portion of it.

The Court: You had got to the point where you had stated in response to the question, was Mr. Stroble in custody, that Mr. Gray said he was not employed to represent Mr. Stroble in the matter of the alleged homicide.

The Witness: Yes. I asked Mr. Gray who he represented and he said Mr. Hausman, the father-in-law—the son-in-law, I think. He said he just wanted to see Mr. Stroble and ask him whether or not he committed the murder in order to report to Mr. Hausman, because he had been instructed by Hausman that if Stroble had done that [fol. 780] murder, he, Hausman, wanted absolutely nothing to do with him. I said to Mr. Gray, “He has completely and voluntarily confessed the crime. I was there. I heard it. He has told all of the details of what he did. Gray, you can take my word for it and so report to your client. Would you like to use my telephone?” He said that he would, and he went to the telephone and started to dial it. I went out and shut the door to give him a little privacy. About five minutes later he came out of the office. I did not hear what he said on the telephone. He thanked me. We then had a little further conversation about Mr. Hausman to the effect that he had represented Mr. Hausman for a

number of years and he believed Mr. Hausman was a very high class man and so forth.

Mr. Alexander: You may cross examine.

Cross-examination

By Mr. Hill:

Q. Mr. Barnes, about what time was it that this occurred?

A. I would say it was within ten minutes after Mr. Stroble confessed. It was along in the afternoon in the neighborhood of 3:30, I suppose; I didn't pay particular attention to the time.

Q. Do you mean at the conclusion of that conversation with Mr. Stroble in the District Attorney's office?

A. Yes, about ten minutes after that.

[fol. 781] Q. Now, I will ask you if Mr. Gray did not in this conversation that you had with him, ask you why he had not been allowed to see Stroble and that you told him that you had been in conference and could not be interrupted? Did that occur?

[fol. 782] A. Something along that line was said.

Q. Then didn't John Gray say to you, "Well, I have a right to see him," and you replied, "No, you don't have any such right"?

A. Yes; I think I told him that he had no right. He was not the man's lawyer.

Mr. Hill: That is all.

M. E. TULLOCK, having been first duly sworn as a witness on behalf of The People in rebuttal, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: M. E. Tullock.

Direct examination

By Mr. Alexander:

Q. Mr. Tullock, what is your occupation, please?

A. Police officer for the City of Los Angeles, attached to the Wilshire Detective Bureau.

Q. Was that your occupation on the night of the 16th of November, 1949?

A. It was.

Q. On that date, Mr. Tullock, do you remember Mr. Henderson and me going out to the Wilshire station?

A. I do.

Q. And Sergeant Brennan was there, too?

[fol. 783] A. He was.

Q. And sometime later that night do you recall we went to the home of Mr. and Mrs. Ruben Hausman?

A. We did.

Q. And after that do you remember being in front of the Hausman home, do you recall that?

A. I do.

Q. Who was present at that time?

A. Mr. Henderson, yourself, Sergeant Brennan, Inspector Jack Donahoe, myself, and Mr. Gray.

Q. Mr. John Gray, the attorney, who testified in this case?

A. That is right.

Q. In that conversation did Mr. Gray say in substance that he does not and will not represent Stroble in the murder case, that his client is Hausman, and he just wants to satisfy himself that Stroble committed the murder?

A. He did.

Mr. Alexander: Cross-examine.

Mr. Hill: No cross-examination.

WILLIAM H. BRENNAN, having been previously sworn, was recalled on behalf of The People in rebuttal, was examined and testified as follows:

[fol. 784] Direct examination

By Mr. Alexander:

Q. Sergeant Brennan, you have already been sworn?

A. Yes, sir.

Q. To save time, you recall the occasion being in front of the Hausman home on the night of November 16, 1949?

A. Yes.

Q. Was John Gray then present, too?

A. Yes, John Gray was present.

Q. Who else was present?

A. Sergeant Tullock, yourself, Mr. Henderson, and Inspector Donahoe.

Q. Was Mr. John Gray, the attorney, there?

A. John Gray was there.

Q. And was there a conversation there in front of the Hausman house just as we were all about to leave?

A. Yes, there was.

Q. And in that conversation did John Gray in substance say that he does not and will not represent Stroble, the defendant, in this murder case, his client is Hausman, and his only interest is to determine whether Stroble did or did not commit that murder.

A. Yes, he did.

Mr. Alexander: You may cross-examine.

[fol. 785] Cross-examination

By Mr. Hill:

Q. Are you sure that this was on the night of the 16th of November, Mr. Brennan?

A. It could have been just after twelve o'clock, the morning of the 17th, but it was right around midnight, it might have been 12:15.

Q. As a matter of fact, wasn't this conversation with John Gray concerning which you have related, after Stroble had been apprehended?

A. It was not. However, he did make that same statement afterwards, but the statement that I just testified to was made on the night of the 16th or the early morning of the 17th, right about midnight.

Mr. Hill: All right, that is all.

Mr. Alexander: Your Honor, may we approach the bench for just one moment?

The Court: Yes.

(Discussion between court and counsel at the bench, out of the hearing of the jury.)

[fols. 786-788] Mr. Hill: If your Honor please, we will stipulate that if Mr. Adolph Alexander were sworn as a witness he would testify with relation to the conversations had with Mr. John Gray at the Wilshire Police Station, and later at the Hausman home, substantially the same as has been testified by Officer Brennan and Tullock.

Mr. Alexander: Thank you, Mr. Hill. We will accept that stipulation.

The Court: All right.

Mr. Hill: We will make the same stipulation with reference to Mr. Fred Henderson, if he were sworn as a witness he would so testify in substance as Mr. Tullock and Mr. Brennan have testified with relation to conversations had with John Gray at the Wilshire Police Station, and later at the Hausman home.

Mr. Alexander: Thank you. We will accept that stipulation.

[fol. 789] J. A. DONAHOE, having been first duly sworn as a witness on behalf of The People in rebuttal, was examined and testified as follows:

The Clerk: And your name, sir.

The Witness: J. A. Donahoe.

Direct examination

By Mr. Alexander:

Q. What is your occupation, please?

A. Police officer for the City of Los Angeles.

Q. And what rank do you hold?

A. I hold the rank of Emergency Inspector of Detectives at this time.

Q. Inspector Donahoe, do you recall the night of the 16th of November, 1949, being in the Hausman home on South Crescent Heights?

A. Yes, sir.

Q. And do you remember late that night after we left the

home did we have a little conversation on the sidewalk in front of the house?

[fol. 790] A. Yes, sir.

Q. Do you remember who was present then?

A. Mr. Henderson, yourself, and Mr. Gray, Sergeant Brennan,—

Q. Tullock?

A. —his partner, Tullock, and five of us were standing together there; there were two uniform men a little farther down the street on the corner.

Q. They were further down towards the corner, is that right?

A. Yes.

Q. Now, Inspector Donahoe, at that time when we were gathered there in front of the Hausman home did Mr. John Gray in substance say to you that he does not represent Stroble in the murder case, that he won't represent him, that his clients are the Hausmans, and all he wants to do is find out for himself whether or not Stroble did commit that murder?

A. That is true.

Q. Now, Inspector, the following day you remember you were in our office?

A. Yes, sir.

Q. That was the 17th of November, 1949. Sometime during the afternoon and while the defendant Stroble was in Mr. Simpson's office did you have occasion to leave that office and go down the hallway?

[fol. 791] A. I did.

Q. When you went down the hallway did you see Mr. John Gray?

A. I did.

Mr. Hill: Pardon me, Mr. Alexander, What page in the transcript?

Mr. Alexander: 427.

Q. Did you have a conversation with John Gray at that time?

A. Yes, sir.

Q. Will you relate the substance of that conversation, please?

A. Mr. Gray—

Mr. Hill: Wait just a minute. Objected to as not rebuttal in that form; incompetent.

The Court: I don't get the point in view of the fact that the witness testified who the conversation was with. Mr. Donahoe, it seems to me, should give his version of the conversation.

[fol. 792] Mr. Hill: He asked specific questions on cross examination, if your Honor please, and my understanding of the rules of evidence governing where a witness has either denied or stated that he did not remember certain things—

The Court: Well, those are on impeaching questions.

Mr. Hill: That is what I am talking about.

Mr. Alexander: I am just seeking to elicit the entire conversation.

The Court: Well, I think it doesn't really come within the hearsay proposition, but it comes in the question as to the actual situation affecting Mr. Gray up in the District Attorney's office. Objection overruled.

A. Mr. Gray asked if Stroble had confessed and I told him that he was making a complete statement. Mr. Gray asked me when he would be able to see Mr. Stroble and I told him that the statement would probably take another 30 minutes or more. I asked him if he was going to represent Mr. Stroble and he said he was not, but his purpose for being there was merely to hear from Stroble's lips the truth so that he could relay it back to the Hausmans. I told Mr. Gray that if he could believe me and that we had not told him any falsehoods previously that he could go back and tell the Hausmans that Mr. Stroble was making a complete and voluntary confession to the effect that he solely was responsible for the murder of the child. Mr. [fol. 793] Gray said that he would rather talk to Stroble himself, so I told him in that case if he would remain there until after the statement was completed and then see Mr. Alexander or Mr. Henderson, why he would be able to see Stroble.

Mr. Alexander: You may cross examine.

Cross examination

By Mr. Hill:

Q. Mr. Donahoe, wasn't this included in that conversation when you met Mr. Gray—now, this was outside the District Attorney's office, wasn't it? That was where the conversation was being had with Mr. Stroble, that is correct, isn't it?

A. Well, the conversation I had with Mr. Gray was in the waiting room at the counter of the District Attorney's office.

Q. Where you first enter into the suite of the District Attorney's office?

A. That is right.

Q. And there is an information desk with a couple of young ladies there behind the counter?

A. Yes, immediately standing near that desk.

Q. And there are two doors, glass empaneled, one on each side of the information desk?

A. Yes.

Q. And those doors are electrically controlled? In other [fol. 794] words it requires pressure of a buzzer or a button or some other mechanism by one of the young ladies to allow one of those doors to be opened?

A. Well, normally that is an electric lock, yes, sir, but with the crowd that was there that day, that lock was not in action.

Q. Now, you came outside the inner corridor of the District Attorney's office into the office, what we will call the waiting room?

A. Yes.

Q. At the entrance to the District Attorney's office; that is correct, isn't it?

A. Yes.

Q. And that is where you saw Mr. John Gray, that is correct, isn't it?

A. No, I was in the inner hall and Mr. Gray motioned to me to come out and speak to him?

Q. Well, did you go out?

A. Yes.

Q. And that is where you had the conversation in front of that desk?

A. Yes, sir.

Q. In the space between the information desk and the outer office doors leading from the elevator into the inside room?

A. In the waiting room, yes.

[fol. 795] Q. All right. Was anybody else there at that time or just you and Mr. Gray?

A. Mr. Gray and I were having a conversation and in that room there could have been two dozen people or a dozen.

Q. Didn't you tell—

Mr. Alexander: Let him finish, please.

Mr. Hill: Pardon me, I thought you had finished.

A. I wouldn't estimate the number of people; there were a number of people moving around.

Q. But not taking part in the conversation between you and Mr. Gray?

A. That is right; they had no part of it.

Q. Just you and he in conversation?

A. Yes, sir.

Q. Now, I will ask you if at that time Mr. Gray told you that he wanted to see Stroble?

A. Will you read that question?

(Question read.)

A. He did.

Q. And you replied that Mr. Gray probably would not be able to see Stroble?

A. I made no reply like that, no, sir.

Q. Didn't you tell him that he might be able to see Mr. Alexander in a half hour or an hour?

A. I did not.

[fol. 796] Q. Didn't you say this to Mr. Gray, in words or substance to this effect: "Why don't you go on home and come back tomorrow and let's do this thing right"?

A. It is very probable that I might have told Mr. Gray that at the same time that I told him if he could believe me, that Stroble was giving a confession, a complete confession.

Q. Well, will you say that you did or did not say that?

A. Well, I would say that I did. It is a reasonable statement.

Q. Well, we trust that all of your statements are reasonable, Mr. Donahoe. I have known you for a number of years.

A. Thank you, sir.

Q. Then did Mr. Gray say that he was going to remain there until he did get to see Stroble?

A. He did, yes.

Q. Then you left; isn't that about the sum and substance of what occurred?

A: Yes, our business took me back into the room with Mr. Simpson.

[fols. 797-799] Q. And when you left he was still in the outer office near this information desk in the District Attorney's suite?

A. I did not see Mr. Gray again that day.

Q. I say, when you left he was still there?

A. When I left to go back into Mr. Simpson's office?

Q. That is right.

A. Yes, sir.

Mr. Hill: That is all. Thank you, Mr. Donahoe.

Mr. Alexander: Thank you, Inspector.

[fol. 800] DR. EDWIN E. McNEIL, having first been duly sworn as a witness on behalf of The People in rebuttal, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Edwin E. McNeil.

Direct examination

By Mr. Henderson:

Q. Doctor, are you a physician and surgeon licensed to practice your profession in the State of California?

A. Yes, I am.

Q. Will you state your medical education and experience?

A. I graduated from the University of Colorado School of Medicine in Denver, Colorado, in 1931. I served a rotating internship in Oakland, California. I was then appointed a Commonwealth Fund Fellow in Psychiatry and served two years at the Colorado Psychiatric Hospital, which is part of the University of Colorado Medical School, Denver, Colorado. After that I was resident psychiatrist at Bloomingdale Hospital at White Plains, New York, for a little over two years. Following that I was chief resident psychiatrist and clinical executive at the Payne Whitney Psychiatric Clinic, which is part of the New York Hospital of Cornell Medical School set-up. I was there a little over two years. Following that I was medical director of the Oahu Medical Health Clinic in Honolulu for approximately nine months. Then I was director of the Bureau of Mental Hygiene of the Territory of Hawaii, which is one of the bureaus under the Board of Health in the Territory of Hawaii, for a little over four years.

Since 1944 I have been in private practice here in Los Angeles.

Q. And you specialize in psychiatry, do you, Doctor?

A. Yes; neurology and psychiatry.

Q. Were you appointed by the court as one of the psychiatrists to examine the defendant in this case?

A. I was.

Q. In connection with that appointment did you read the transcript of the preliminary examination in this case?

A. Yes, sir.

Q. Did you also examine Mr. Stroble, Doctor?

A. Yes, sir, I did.

Q. When and where did you examine him?

A. I examined him in the Los Angeles County jail Wednesday, December 14, 1949.

[fol. 810] "Q. Why are you here in the jail?"

"A. Well, for that crime I did.

"Q. What was that?

"A. I killed the little girl.

"Q. What date was it?"

And I showed him a calendar in order to help him and he answered:

"I think it was Monday, November 14th.

"Q. What time of the day was it it happened?

"A. About half-past three or a quarter to four.

"Q. What was the name of the little girl?

"A. Linda.

"Q. How long had you known her?

[fol. 811] "A. I imagine about two years.

"Q. Had she been in the house many times?

"A. Oh yes.

"Q. Were you and she alone in the house that day?

"A. Yes.

"Q. Where were you?

"A. I was sitting in the front room in front of the window, when she came over—with a glass of whiskey I was drinking.

"Q. Later did you go to the bedroom?

"A. I gave her a chocolate bar, like always—then we walked into the bedroom, the kid's room. Then she asked me, 'Where's Chelle?'

"Q. Who is that?

"A. That's Rochelle.

"Q. Your niece?

"A. My granddaughter. I said 'She isn't home, she went with her mother to a party.' I sat on the bed and she was in front of me. She kissed me and I kissed her.

[fol. 812] "Then I put my finger up inside her panty and she wanted to go out. I said, 'Let's play a little bit.' I forgot to tell you I had quite a few drinks before this."

"Question: 'How much did you drink?'

"Answer: 'I think I have over a pint all day—and two cups of coffee and some wine.' She said she wanted to go outside and play. I said, 'Let's play a little more.' She didn't like that. She started screaming. I was so nervous—before I knew what happened, my hands were on her throat. It took about five or eight minutes. Then I let my hands go and she was lifeless.

"Question: 'Were you afraid she would tell somebody what you had done to her?'

"Answer: 'I couldn't think—but I was afraid of that, sure.

"Question: 'Did you put her body in the blanket?'

"Answer: 'Yes. I put the blanket on the floor and spread it out. Then I wanted to lift her up and I was too weak and too nervous. I tried to pull her hands and feet and I couldn't hold her, my hands were soaking wet. I got ahold of her little panties and one side busted. I got ahold of the other side and put her on the blanket. I went out in the kitchen and had a couple more drinks, then I got the hammer, and I took the hammer and she was covered up—I hit her on the temple. I knew I could not leave her laying there because people would be coming in and out, and tele-[fols.813-857] phone would ring. I tried to carry her out and couldn't, I was too weak; so I dragged her out to the incinerator. The lamb was on and my daughter said to put the potatoes on, and my daughter said she was going to call up at 4:30. I didn't know what to do.'

"Question: 'Did you use some other things?'

"Answer: 'The hammer was the first. Then I got the ice pick. I wanted to be sure she was dead. I stuck her about three times. I wanted to stick it through her heart so I could be sure she was dead. Then I went in the garage and got the axe. I hit her a couple of times on the head and a couple of times on the back. Then I got the knife and I stuck her in the back of the neck. Then I covered her up with some boxes and things.'

"Question: 'Then you went back into the house?'

"Answer: 'I knew I had to get away. I went in and got my coat, then I saw that little pantie on the floor and I put that in the incinerator. Then I had another drink and left. I went and got on the red car and went to Ocean Park. I thought of finishing myself and went on the pier to pick a place. Then I came back and stopped at that saloon on the amusement pier near the theatre.'

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[fols. 858-860] DR. VICTOR PARKIN, having been heretofore duly sworn, was recalled on behalf of the defendant in surrebuttal, and was examined and testified further as follows:

Direct examination

By Mr. Hill:

[fol. 861] Q. Just state what he said to you in substance with relation to the acts, his acts and conduct with relation to the child from the time they went into the bedroom.

A. Then he said that he gave the little girl some candy [fol. 862] and put her on the bed, lifted her to the bed, I think he said, or got her to get on the bed, and—no, he sat her on the bed and kissed her and drew her to him and squeezed her.

Q. Go ahead. Then what?

A. Then began playing with her private parts and she wanted to go out and play, but he said "No, let's play a little bit here." And she was struggling to get off the bed. Then he put her back on the bed again. She insisted on going out and struggled to get away. Then she started to scream. "I got afraid. I was very nervous and trembling. I don't know why she screamed. The window was open and I was afraid the noise would be heard. I grabbed her by the throat to stop her screaming."

[fol. 863] Then he paused, he said, "Perspiration was pouring off me—"

Q. Now, let's pause also right there, Doctor. Assuming everything that I have already asked you, and assuming the correctness of his statements to you in narrating this act of choking and squeezing as you have just described, have you any opinion as to whether or not he at that time had the ability to use the functions of his brain to deliberate in the formation of any intent to kill the girl?

A. If I may be permitted to go ahead a little bit more, I will give you more reasons for an opinion than I can on just that—

The Court: Dr. Parkin, just answer the question.

Mr. Hill: Just answer this first.

The Witness: No.

Mr. Hill: You have an opinion?

A. Yes, I have an opinion. I thought you asked would he be able to deliberate.

By Mr. Hill:

Q. What is your opinion?

A. At that time he did not have the—yes, at that time he did not have the ability to deliberate.

Q. Now, will you continue with your narration of what the defendant told you?

A. “When I saw her lying”—yes,—“I grabbed her by the throat to stop her screaming. When I saw her lying [fol. 864] lifeless I got off the bed and got a necktie and tied it around her throat. Then I went to the kitchen and had another drink. I did not know what to do. I was lost then.”

Q. Let's stop right there. Now, assuming everything that we have already propounded to you, I will ask you if you have an opinion as to whether or not in the procuring of the necktie and the tying it around her neck, and tying it, as to whether or not he had the mental capacity and ability to exercise the functions of his brain to deliberate in the doing of the act?

A. Only to a degree.

Q. Have you such an opinion?

A. Yes, I have an opinion.

Q. And what is that opinion?

A. That he did not have the full control of his mental faculties so as to deliberate.

Q. He did not have the full control of his mental faculties so as to deliberate?

A. Yes.

Q. Now, will you continue with your narration from that point on as to what he told you?

A. Then he said he took a blanket off Freddy's bed and laid it on the floor. He said, “I tried to lift her up and put her on it, but I was too weak. I took her by the legs. My

hands were so wet with sweat that they slipped. I got [fol. 865] her by her panties so I could pick her up. I finally managed to get her onto the blanket and cover her up."

At this point he put his hands to his head and said, "I can't believe it."

Q. Pardon me, I didn't get that last answer.

A. He said, "I can't believe it."

Then after a short pause he said, "I was afraid someone would come into the house. I couldn't leave her lying there. I took her out to the incinerator and covered her with a blanket. Then I got a hammer from the kitchen. I felt under the blanket for her temple and then hit her on the temple with the hammer, hitting her head under the blanket. It seems as though something made me do it. I returned to the kitchen."

Q. Pardon, let's pause right there, Doctor. Assuming everything that we have already propounded to you and including now his narration of putting her in the blanket, the manner of his doing it and dragging her from the bedroom out from the house into the back yard, procuring that hammer and striking of the blows with the hammer on the right temple region of the head, have you an opinion as to whether at that time in the doing of those acts and the procuring of the hammer and the hitting her on the head with the hammer, as to whether he had the mental ability to exercise the powers of deliberation in the formation of [fol. 866] the intent to kill?

A. Yes, I have an opinion.

Q. And what is that opinion?

A. He did not have that power.

Q. Now, will you go on with the narration?

A. "I returned to the kitchen and got an icepick and stabbed her where I thought her heart was, first in the front through her chest, then turned her over and stabbed her on the right side because I wanted to be sure the pick would go into her heart. Then I went into the garage and got an axe. I hit her a couple —"

Mr. Hill: Let's stop right there.

Q. Assuming everything that we have already propounded to you now adding this narration with relation to the obtaining of the icepick and the manner of the dealing of the blows into the body of the little girl as he described it to you, have you an opinion, with everything in the picture we have already considered and this added portion of the episode, as to whether or not he had the mental ability to exercise the power of deliberation in the doing of the act?

A. I have.

Q. What is that opinion?

A. He did not.

Q. Now, continue with your narration.

A. "I don't know why I did this, but I remember using [fols. 867-901] the axe. Then I went to the kitchen and took a kitchen knife about that long"—indicating about 8 inches—"and stabbed her in the back of the neck. I had seen that done in the bull fights in Mexico. If she was not dead I knew that would kill her. I did not want her to suffer." He stated he then covered her with cardboard boxes and says, "I went into the house, walked into the bedroom, picked up her panties, took them to the incinerator to get them out of the house, but I don't know why." Then he states he returned to the house and had a drink. "I could not think what to do. I said to myself, 'I might as well kill myself and jump off the pier.' There was no other way out. I was up against it."

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[fol. 902] DR. ROBERT E. WYERS, having been first duly sworn as a witness on behalf of The People in rebuttal, was examined and testified as follows:

The Court: And your full name, please, Dr. Wyers?

The Witness: Robert E. Wyers.

Direct examination

By Mr. Henderson:

[fols. 903-909] Were you appointed by Judge Fricke as one of the psychiatrists to examine Fred Stroble?

A. I was.

Q. When did you examine him, Doctor?

A. I examined him twice; December 11, 1949, and December 18, 1949.

[fol. 910] Q. Did he say anything to you about his present difficulties?

A. Yes. "The accused says 'I started sexual play with Janet, the little girl at 6262 Verdugo Road, about five and a half years old,' after he had started sex play with Linda; [fol. 911] and that he was arrested May 5, 1949, and jumped bail after staying at his daughter's home three or four days.

"I went to Mexico May 8, 1949. Came back the first time July 3rd early in the A.M. Went back to Mexico July 5th. I stayed in Mexico until Friday, November 11th. I stayed in Tia Juana and Ensenada. I was drunk all the time until the 2nd of July. I was arrested on November 14th charged with the murder of Linda on November 11th.' He freely talked about his difficulties sexually and the present charges against him. He tells about sex play with Linda, before he started with Janet about two weeks before, he thinks. He explained that he had been drinking all night on the 10th and he did not sleep any until four a.m. because he saw the clock, as it was on the Frigidaire near where he was sleeping at his daughter's home.

"He says he went to town about seven a.m. after he made some coffee. Then he came back to his daughter's house about 1:30 p.m. His daughter was trying to sleep, so he

had some more drinks of liquor. His daughter left with Chella, his granddaughter, and Linda came over to the house about 3:40 p.m.

"I kissed her and she kissed me and I played with her by putting my hand under her panties and she said, 'Let's go outside.'" Then I tried to put her on the bed, and she screamed after I started playing with her again. I placed [fol. 912] my hands on her throat to stop her screaming. I was so nervous then I didn't know what I was doing. I knew if people heard, I would be in trouble. After I choked her I could see her lying there lifeless. I saw some neckties hanging nearby, and I took one of these and tied it around her neck. I don't know why I did it, because she was dead anyway. I was so nervous I didn't know what to do.

"I took a blanket from the other bed and put it on the floor. I wanted to lift Linda on to the blanket but I was too weak and sweaty and nervous. I tried to pull her off by the legs, but my hands were so slippery I could not hold on. Then I tried to pull her by the panties and they busted. I wrapped the blanket around her and went to the kitchen to get a hammer and struck her on the head through the blanket. Then I put the body at the incinerator and went to get an axe to strike her with. I got a knife and jabbed her in the back of the neck. Then I covered her with boxes. I went to the house and looked around and found the little panties on the floor. I put them in the incinerator, turned the fire off under the potatoes in the kitchen. I didn't know what to do.

[fols. 913-995] "I got my coat and went on the red car line to Ocean Park. Here I picked a place for suicide. Then went back to the cocktail parlor, had more drinks. Later I decided I would give myself up, but I wanted to call my daughter and son-in-law and John Gray and my old boss at Van de Kamp's before I did."

[fol. 996] • **Colloquy and Offers in Evidence**

(Jury present and in the box.)

Mr. Alexander: If the Court please, in determining the issue of sanity, counsel for the defense has offered to stipu-

late that this jury may consider all the testimony heretofore urged on the issue of not guilty with the same force and effect as though it had been reproduced before the jury on the question of sanity. With that stipulation, People will accept.

Mr. Matthews: And the defense accepts it.

Mr. Alexander: I believe that covers that situation, your Honor.

The Court: Well, I stated to counsel at the bench I think the law contemplated that that should be the procedure, because it would hardly be a logical, reasonable procedure to have to go all through the evidence again merely as a matter of repetition and consumption of time, where we are trying the issue before the same jury.

Mr. Matthews: Your Honor, at this time I request permission of further voir dire examination of Mr. Kalbfuss.

The Court: Who?

Mr. Matthews: Mr. Kalbfuss, foreman of the jury.

The Court: Objection sustained.

Mr. Matthews: I don't believe there is any objection in the record.

[fol. 997]. The Court: I am going to make the objection myself.

Mr. Matthews: I then make an offer of proof.

The Court: It is not a question of offer of proof, at all. The Supreme Court itself has ruled any questions to be put to a jury trying a case in which the two issues not guilty and not guilty by reason of insanity are involved must be examined on the voir dire when they are originally examined; that if the juror is passed and not challenged and accepted as a juror, the juror remains as a juror and cannot thereafter be examined on voir dire.

Mr. Matthews: Is that true where the juror has misled the defense counsel as to his occupation?

The Court: The Court at this time holds that there is no voir dire permissible at this time.

Mr. Matthews: I then wish to make an offer of proof.

The Court: You can make it up at the bench.

(Whereupon the following proceedings were had at the bench, out of the hearing of the jury:)

The Court: I think we should have the record showing Mr. Hill is not present, Mr. Matthews is proceeding alone.

Mr. Matthews: We offer at this time to prove by the personnel manager of the Los Angeles "Mirror" that Mr. Kalbfuss is employed by the Los Angeles "Mirror"; and that his occupation as such at the Los Angeles "Mirror"——

(Interruption.)

[fol. 998] Mr. Matthews: (Continuing) — is that of mailer; that the personnel records show at the present time he is on jury duty.

The Court: Well, go ahead, let's get the rest of the facts.

Mr. Matthews: That one Eddie Molen if called to testify would state that on Saturday, January 7, he observed Mr. Kalbfuss in the Los Angeles "Times" Building, located in the City of Los Angeles——

The Court: I think I see what you are leading up to.

(Addressing jury:)

The jury at this time will be given a recess.

We will resume this matter in chambers where we can discuss the matter with more freedom.

Mr. Alexander: We want Ellery Cuff here, Judge.

The Court: Ellery Cuff, Davis, and Bliss.

(In chambers:)

The Court: You may go ahead with the offer.

Mr. Matthews: We ask at this time that the voir dire examination of Mr. Kalbfuss as a juror be incorporated in our offer of proof; that as to Eddie Molen, if Eddie Molen was called he would testify that he saw the juror, Mr. Kalbfuss in the Los Angeles "Times" Building—I can't think of the date—on Saturday, January 7, I believe that is right; that at that time he had a newspaper under his arm, that the {fol. 999} newspaper was the newspaper of the Thursday edition of the Los Angeles "Times"; that its headline substantially was "Jurors Weep As Stroble Trial Begins". That is the end of the offer.

(Discussion.)

(The following proceedings were had in open court:)

The Court: In the case of People versus Stroble, we will come to order again. Let the record show at this time that that portion of the court proceedings which were conducted in the chambers have been transferred back here, the offer of proof having been completed.

Mr. Alexander: Has that offer of proof been completed?

Mr. Matthews: Yes, your Honor.

Mr. Alexander: People object on the ground it is incompetent, irrelevant, and immaterial; and any voir dire of the jurors at this time is not proper.

The Court: Objection sustained.

Mr. Matthews: Your Honor, may we ask for a recess until 2:00 o'clock?

The Court: Yes.

(Jury present and in the box.)

The Court: Ladies and gentlemen of the jury, we have found that we would hardly be able to proceed at this time; so we are taking a recess until 2:00 o'clock this afternoon. In the meantime, keep in mind the admonition. Return here at 2:00 o'clock.

(Adjournment to 2:00 p. m.)

[fol. 1000] The Court: Record shows counsel and the defendant present.

Mr. Hill: Information has been conveyed to me that it is the desire of the defendant Fred Stroble to withdraw the case on the second issue now before the Court on the plea of not guilty by reason of insanity, waiving his right to a trial by jury, to be tried by the Court without a jury. Is that correct, Mr. Stroble?

The Defendant: That is correct.

Mr. Hill: Is it your desire to waive trial by jury and have the issue now before the Court submitted to the Court?

The Defendant: That is correct.

Mr. Henderson: People also waive.

Mr. Hill: Counsel for the defendant joins in the waiver.

The Court: Let the record show the waiver by the defendant in person, by counsel for the defense in person, and by counsel for the prosecution in person.

Mr. Hill: If your Honor please, we now submit the evidence upon the issue of not guilty by reason of insanity, as to all the evidence heretofore introduced by your Honor on the main portion of the trial on the plea of not guilty, and if the People desire the doctors' opinions we join in a [fol. 1001] stipulation that the reports filed with the Court by the three doctors appointed by the Court, together with the doctors who appeared here on behalf of the defense in the other trial, may be considered as evidence on this issue—together with all the other evidence in the case; stipulating that on the reports of Doctors Wyers, McNeil, and Parkin, that they may be accepted by the Court with the same force and effect as evidence in the case as if the Doctors appeared before your Honor at this time, were sworn and so testified.

The Court: There is also in the record, Mr. Hill, the report filed by the Doctor Frostig and the psychologist who cooperated with him: I think that should be included in the stipulation with the same effect.

Mr. Hill: I intend to offer that as part of the stipulation.

Mr. Alexander: People so stipulate, your Honor.

The Court: Is there anything further?

Mr. Hill: There is nothing further for the defense.

Mr. Alexander: Was Dr. Crahan's report mentioned in that?

The Court: I do not have a copy of Dr. Crahan's report.

Mr. Hill: Have you got it?

Mr. Alexander: Yes.

Mr. Hill: We will add in that stipulation, the report of [fol. 1002] Dr. Crahan.

The Court: Dr. Crahan has testified, and I have not seen any conclusion that Dr. Crahan has made upon the basic issue here at the present time.

Mr. Alexander: May I hand your Honor a copy of Dr. Crahan's report?

The Court: Yes. Is this a copy which can be filed, Mr. Alexander?

Mr. Alexander: Yes, it is, your Honor.

(Court examining documents.)

The Court: The early part of the report, the history gained from the defendant, discussion with the defendant, and the physical examination have already been testified to. I am devoting my attention specifically now to the psychiatric and mental examination.

I have read that portion of the report. Do you gentlemen want to argue the matter?

Mr. Hill: I will submit it.

Mr. Alexander: Submit it, your Honor.

The Court: If counsel will pardon the personal note—as counsel are aware, I have had more than the normal contact with the possible insane, and I am quite close to the situation. I find nothing in any of these reports basically inconsistent with what I have been able to learn on the subject. All of the psychiatrists agree that the defendant at the time of the commission of the homicide was a sane [fol. 1003] person: sane within the meaning of the law; and there is nothing in the reports to indicate that there was any other form of psychosis or insanity other than the legal form; in other words, nothing to sustain even the theory of medical insanity or even the theory of mental illness. The Court finds that at the time of the commission of the offense charged against the defendant, of which he has been found guilty, that the defendant was sane.

Mr. Hill: May I request all reports of the doctors which have been submitted to your Honor on the stipulation be copied into the record of the proceedings at this time?

The Court: In view of the fact there will be an automatic appeal, and that the Appellate Court should have all the information, it is ordered that these reports be made a part of the record. I think probably the best way to handle it would be to have them marked as exhibits.

The Clerk: They are already filed, your Honor, all of them are in the file.

The Court: I mean for the purpose of identification. It might be a good idea to mark them as exhibits by reference, since they have been introduced as evidence, to bear numbers. The Clerk may number them, beginning with No. 51;

there will be five reports, so it will be 51 to 55, inclusive; and they are marked in evidence.

Mr. Hill: Will your Honor now designate the time for pronouncing judgment and sentence?

[fol. 1004] The Court: I will take the suggestion of defense counsel as to the date when you would like to have that set.

Mr. Hill: May I suggest about next Thursday, if your Honor please?

The Court: I would prefer not, Thursday being a probation day, Mr. Hill.

Mr. Hill: Friday of next week?

The Court: All right, Friday of next week, at 9:00 o'clock in the morning, for judgment and sentence.

It is directed that the reporter of this court transcribe into the record the Doctors' reports.

Jury excused.

(Jury present and in the box:)

The Court: Ladies and gentlemen of the jury: during the interim the trial by jury of the issue of not guilty by reason of insanity was waived, and it was stipulated and agreed by counsel and the defendant that the question be determined by the Court without a jury; and that has been determined, so that your services in this particular case are now at an end.

(After further remarks by the Court to the jury in appreciation of their services, the jury was excused and court adjourned.)

[fol. 1005]

Exhibit No. 51

EDWIN EWART MCNIEL, M.D.
3875 Wilshire Boulevard
Los Angeles 5, California

Exposition 6493

December 20, 1949

HONORABLE CHARLES W. FRICKE
Judge of the Superior Court
Department 43
Los Angeles 12, California

In re: PEOPLE vs. FRED STROBLE
Case No. 130013

Dear Sir:

In accordance with your request, dated December 2, 1949, I proceeded on Wednesday, December 14th, to examine psychiatrically the above named defendant, who is charged with murder, in the Los Angeles County Jail.

In accordance with the instructions of the Court, the examiner read the preliminary transcript in this case. He also read the report prepared by Dr. Marcus Crahan of his examination of the defendant.

Personal History:

The subject is a 68 year old, white male who stated that he was born October 7, 1881, in Vienna, Austria. He said he started to take out his United States citizenship papers at one time, but never completed this procedure, and he [fol. 1006] presumes he is still technically an Austrian citizen. He went as far as the fourth grade in school. He came to the United States in 1901. At that time he made several crossings of the Atlantic while he was working on the boats. He stayed on in New York City and soon started working as a baker in small bakeries. Except for short intervals, he has worked as a baker most of his life. He spent two years working for the Fleischman Yeast Company. He came to California in 1924 and worked for the Van de Kamp Bakery, starting in 1924 and continuing to 1946. He

went on his regular vacation and while he was away there was a strike at the Bakery. When he came back from his vacation he felt he should not go through the picket lines. Later, when the strike was over he went back to go to work and, according to him, they did not rehire him because he had refused to go through the picket lines. He was apparently a supervising baker for many years, and would have charge of the preparation in the baking of things such as pies in a certain department. Since 1946 he has not been regularly employed.

Marital history: He was married in 1915 to Louise Schimmack. One child, a girl, Sylvia, was born of this union. She is now 31 years old and is Mrs. Ruben T. Hausman. They lived at 2003 Crescent Heights Boulevard, Los Angeles. The defendant said he understood they had moved since the present difficulty. When asked about his marriage, he [fol. 1607] said: "When I got married I didn't know anything about her mental health. I met her on the boat going between San Francisco and Panama. We were married in Panama City. When we got to New York City I found she had been in a mental hospital since she was eighteen. She had a nervous breakdown. I think it was the Central Islip State Hospital on Long Island." He said she was actually in the hospital a "few weeks".

Question: "How old was she when you got married?"

Answer: "She was 29 or 28. She is six years younger than I am and we got married when I was 35."

Question: "When did she go to a mental hospital the next time?"

Answer: "She got picked up by the police several times. She tore her clothes off and hollered. Fifteen years ago she went to Arizona on a trip and became disturbed, violent, tore the telephone off the wall in a hotel, screamed, threatened to hit the bus driver on the head with a coke bottle. She was committed to the Arizona State Hospital in Yuma. She stayed there five or six weeks."

"We first went to Honolulu in 1936. Our daughter met Mr. Hausman there. Later she married him. He was in business in Honolulu. After that we went back almost every summer on our vacation. We were in Honolulu at the time of the bombing of Pearl Harbor. She was upset going over

on the boat. She would stay up on deck all night, and [fol. 1008] interfered with the deck boys. The last day she tore her clothes off. This was the last trip of the Lurline to Honolulu before December 7, 1941. She was taken from the boat to Queen's Hospital in an ambulance. After five days she was committed to the Kaneohe Territorial Hospital. She stayed at the Kaneohe Territorial Hospital for eleven months, then we came back. I was supposed to put her in a mental hospital here but I didn't. She got picked up several times by the police because she caused trouble. A Captain O'Reilly called me at five in the morning. I was at work and couldn't leave. I asked him to sign the paper for me and he did. She was sent to the General Hospital. Then they committed her to the Norwalk State Hospital, and she is still committed. She is now in a State Hospital near San Francisco. I don't remember the name."

He said his sexual relations with his wife were satisfactory when they were first married. They had sexual relations on an average of once a week. Later it was about twice a month. He said she usually had an orgasm. He stated that they had regular, or normal, relations, and he denied ever having indulged in any perversions with her. He said he was potent with her.

Sexual life: The subject stated that he had his first sexual relations with women at the age of 17. He said he went with "many girls before marriage" and had sexual relations with many of them. He estimated that he had had [fol. 1009] sexual relations with about fifteen women before he was married. He claimed that he had never had any sexual relations with prostitutes. He said he began masturbating when he was eleven and that this started while he was playing with other boys. "They showed me how to do it". He said he had continued this practice to the present time. He claimed he had never had any sexual interest in men or boys. He told this examiner that his sexual interest in young girls started only two years ago. He said he had only been interested in two girls, Linda and Susan, in this way. He was asked whether or not he had had sexual relations with a little girl in Honolulu, which was mentioned in the records. He claimed to this examiner that he had never had any sexual contact with her, and said he did not

touch her. He told a story in which he said a police officer came and warned him that her "mother did not want me to talk to her daughter and to leave her alone".

Family History:

Father: Frank Stroble. He died when the subject was eleven. He was an assistant brewmaster.

Mother: Barbara Deusch. She died at the age of 54 of causes unknown to the defendant.

Siblings: The subject said he was the fourth or fifth in a family of eight or nine children. He said he had lost contact with his family and did not know of their present status or whereabouts.

[fol. 1010] He said that as far as he knew his wife was the only mental patient in his family group.

Medical History of Defendant:

When asked about his medical history, he said: "I was always small for my age. My mother said I had all the illnesses a child could have". He said when he was eighteen he was hospitalized in Vienna for four months with "acute arthritis. They said I was unconscious for eight or ten days".

He stated that he incurred an infection in two fingers of his right hand twenty years ago while working at Van de Kamps, and that it was necessary for them to perform three operations on his hand and arm before he recovered. He denied ever having had any venereal disease. He said he was in a street car accident thirteen years ago. He was knocked about fifteen or twenty feet by the street car. He got off one street car and was hit by another which was going in the opposite direction. He received a cut on the forehead and was unconscious for a few minutes. He was treated at the Georgia Street Receiving Hospital and went home. He said he was off work for about a week. Ten years ago he was in an automobile accident near San Fernando and Fletcher, which is close to Van de Kamp Bakeries. He said he went to a little saloon called the Black Dog with some friends where he had a couple of drinks. "We were going across the street and I got confused with all the lights [fol. 1011] and a car hit me and knocked me down. It broke

two ribs. My right arm was pretty badly injured and my head was skinned in front. A little bone in my ankle was broken. I was unconscious a little while but not very long. They took me to the General Hospital. I was there about four weeks."

He denied ever having had any spells, fits, convulsions or epilepsy. He said, "have occasional dizziness".

Previous Arrests:

P. May 5, 1949. Los Angeles. Contributing to the delinquency of a minor. The defendant stated that he was out on \$500 bail and that he left town four days before he was to appear in court for the hearing.

Service Record:

The subject stated that he was drafted in 1918, but the war was ended before he was inducted.

Use of alcohol or drugs:

He denied ever having used any drugs. He said he had not even taken aspirin. He said he had never used marijuana. He said he had done some social drinking, particularly on week-ends or holidays, or when they had company, for many years. He said his drinking had been heavier during the last two years. He volunteered, "I don't drink much, though—some beer or wine, a high ball or two".

[fol. 1012] Present Mental Status:

a) Orientation:

The subject was oriented for time and place.

Question: What is the date?

Answer: December 14, 1949.

Question: What place is this?

Answer: The Los Angeles County Jail.

b) Manner, attitude, demeanor and appearance, cooperativeness:

He was quiet, pleasant and cooperative, and seemed very anxious to answer questions carefully. His answers to

questions were sometimes long, but the subject matter was relevant and pertinent to the question.

c) Delusions and hallucinations:

He was questioned regarding whether or not he had ever experienced any delusions or hallucinations. Their nature and meaning were explained to him. He denied ever having had such experiences, and no history of delusions or hallucinations was elicited.

d) Emotional reactions:

He did not show any remarkable emotional reactions during the examination. He was not unduly elated, and he was not pathologically depressed. His emotional reactions and responses appeared to be in keeping with his thoughts.

e) Insight into his present situation:

Question: "Why are you here in the jail".

[fol. 1013] Answer: "Well, for that crime I did".

Question: "What was that?"

Answer: "I killed the little girl."

Question: "What date was it? (shown a calendar)".

Answer: "I think it was Monday, November the 14th".

Question: "What time of the day was it when it happened?"

Answer: "About half past three or a quarter to four".

Question: "What was the name of the little girl?"

Answer: "Linda".

Question: "How long had you known her?"

Answer: "I imagine about two years".

Question: "Had she been in the house many times?"

Answer: "Oh, yes".

Question: "Were you and she alone in the house that day?"

Answer: "Yes."

Question: "Where were you?"

Answer: "I was sitting in the front room in front of the window when she came over—with a glass of whiskey I was drinking."

Question: "Later, did you go to the bedroom?"

Answer: "I gave her a chocolate bar, like always—then we walked into the bedroom, the kid's room. Then she asked me, 'Where's 'Chelle?'"

[fol. 1014] Question: "Who is that?"

Answer: "That's Rochelle."

Question: "Your niece?"

Answer: "My granddaughter." "I said, 'She isn't home, she went with her mother to a party'. I sat on the bed and she was in front of me. She kissed me and I kissed her. Then I put my finger up inside her panty, and then she wanted to go out. I said, 'Let's play a little bit'. I forgot to tell you I had quite a few drinks before this."

Question: "How much did you drink?"

Answer: "I think I have over a pint all day—and two cups of coffee and some wine." "She said she wanted to

go outside and play. I said, 'Let's play a little more'. She didn't like that. She started screaming. I was so nervous—before I knew what happened my hands were on her throat. It took about five or eight minutes. Then I let my hands go and she was lifeless."

Question: "Were you afraid she would tell somebody what you had done to her?"

Answer: "I couldn't think—but I was afraid of that, sure."

Question: "Did you put her body in the blanket?"

Answer: "yes, I put the blanket on the floor and spread it out. Then I wanted to lift her up and I was too weak and too nervous. I tried to pull her hands and feet and I couldn't hold her, my hands were soaking wet. I got ahold [fol. 1015] of the other side and put her on the blanket. I went out in the kitchen and had a couple more drinks, then I got the hammer, and I took the hammer and she was covered up—I hit her on the temple. I knew I couldn't leave her laying there because people would be coming in and out, and telephone would ring. I tried to carry her out and couldn't. I was too weak. So I dragged her out to the incinerator. The lamb was on and my daughter said to put the potatoes on, and my daughter said she was going to call up at 4:30. I didn't know what to do."

Question: "Did you use some other things?"

Answer: "The hammer was the first. Then I got the ice pick. I wanted to be sure she was dead. I stuck her about three times. I wanted to stick it through her heart so I could be sure she was dead. Then I went in the garage and got the ax. I hit her a couple of times on the head and a couple of times on the back. Then I got the knife and I stuck her in the back of the neck. Then I covered her up with some boxes and things."

Question: "Then you went back in the house?"

Answer: "I knew I had to get away. I went in and got my coat, then I saw that little pantie on the floor and I put that in the incinerator. Then I had another drink and left. I went and got on the red car and went to Ocean Park. I thought of finishing myself and went on the pier to pick a place. Then I came back and stopped at that saloon on the [fol. 1016] amusement pier near the theater."

Question: "Today, do you think you know the difference between right and wrong?"

Answer: "I do."

Question: "Today, do you know it is wrong to kill a child?"

Answer: "I do."

Question: "Today, do you know that one can be punished for such an act?"

Answer: "I do."

Question: "Today, do you think you are insane?"

Answer: "I think anybody that does anything like that is wrong somewhere."

Question: "On the day that this happened do you think you knew the difference between right and wrong?"

Answer: "I don't know. I was drinking, and I was worried over the first charge."

Question: "At six o'clock of the morning of the day you killed Linda what do you think your answer would have been if I had said, 'Mr. Stroble, would it be wrong to kill Linda?'"

Answer: "I think that no matter how drunk I was I would have known that was wrong."

Question: "Was your mind clear then?"

Answer: "I know it was clear."

Question: "Did you drink voluntarily that day?"

[fol. 1017] Answer: "Yes."

Question: "Did anyone force you to drink that day?"

Answer: "No." "I had left the house early that day. I had promised him (my son-in-law) I would give myself up on the first charge, and I didn't want to see him."

Question: "Did you know what you were doing when you were with Linda?"

Answer: "I don't know. I can't believe I did it. I have tried to tell you what I did."

Opinion:

At the time I examined this man he was oriented for time and place, he was quiet, pleasant and cooperative, and he answered questions relevantly. No history of delusions or hallucinations was elicited. His emotional reactions appeared to be within normal limits. He was able to recall the events of the alleged crime. He thought he knew the difference between right and wrong. He knew that it was wrong to kill a child and that one could be punished for such an act. He said that on the day of the alleged murder he knew it was wrong to kill a child. He said he had done some drinking that day, but admitted that his drinking was entirely on a voluntary basis. He admitted that his motive in killing the child was because he felt she might tell some one what they had done. He said he attempted to dispose of the body because he was afraid it might be discovered.

[fol. 1018] He said the reason he used the various instruments on the child was to be sure that she was dead. In my opinion this man's mind was sufficiently clear at the time of the alleged murder so that he was aware of the nature and meaning of his acts, that he knew the difference between right and wrong, and that he knew he might be punished for the act. In my opinion his mind was sufficiently clear at the time of my examination so that he knew the difference between right and wrong, that it is wrong to murder a child, and that one can be punished for such an act. Therefore, in my opinion this man was legally sane at the time of the commission of the alleged act and at the time I examined him.

Very truly yours,

EEM:f1

(S) Edwin E. McNiel, M.D.

[fol. 1019]

Exhibit No. 52

Frank F. Tallman, M.D., Director of Mental Hygiene.
Robert F. Wyers, Superintendent and Medical Director.
Earl Warren, Governor of California, State of California,
Department of Mental Hygiene, Norwalk State Hospital,
Norwalk, California, December 26, 1949.

Date of Hearing, January 3, 1949, 9:00 a.m.

Honorable Charles W. Fricke, Judge of the Superior
Court, Los Angeles 12, California.

Re: People vs. Fred Stroble. Case No. 130013.

Dear Judge Fricke:

In accordance with your letter of December 2, 1949, appointing me to examine the above named defendant under the provisions of Section 1027 of the Penal Code, I am submitting the following report of my examination. I examined the defendant, Mr. Fred Stroble, on December 11, 1949, and December 18, 1949.

[fol. 1020] Family History: The father, Frank Stroble, died at the age of 51, cause unknown. He was a brewery worker. Mother died at the age of 54, cause unknown. Was a housewife. After her husband's death, worked as a domestic to support the family. There is no history of crimes, insanity, or heavy drinking in the family, as far as he knows. The defendant states he had five brothers, some of whom are dead, and six sisters, some of whom are not living; and that he knows little about them.

Personal History: The defendant was born October 7, 1881, in Vienna, the sixth child. He had five years of schooling. He reads and writes enough for practical purposes. He says that he had a desire to take part in athletics, but he never had sufficient time to spare to become very active in sports. He always worked hard to help make a living. He started school at the age of 7 and went until he was 12 years of age. He then went to work as a janitor in a bakery; then worked preparing coffee for the market. He worked as a steward on an English merchant ship, making trips to the United States; and in 1901 he decided to stay in this country.

Then he worked for a few months as a hotel porter and kitchen helper. After this he was with the Fleischman Yeast Company for a while. He became interested in bakery work, and in 1924 he started work with the Van de Kamp's organization in Los Angeles and he worked for this company until 1946. He states that he took a vacation, [fol. 1021] and when he returned the employees were out on a strike. He would not cross the picket line and lost his job. They would not take him back when the strike was over he says, and he has continually tried to get back until about the first of this year, contacting the manager frequently.

Diseases and Injuries: The defendant gives a history of being rather frail and having many sicknesses in childhood. "My mother said I was the weakest one." He had rheumatic fever and remained in bed for four and a half months at the age of 17. The middle finger of the right hand is stiff, and he says this was caused by a severe infection in 1948 and it was necessary to operate three times. Some 13 years ago he had a severe head injury when he was getting off of one streetcar and was struck by another, causing a long laceration on the forehead, and the scar is still visible. Says he was unconscious after being knocked some 20 feet. He doesn't know how long he was unconscious and that he was off work about a week from this injury.

Alcohol and Drugs: He states that he had an occasional social drink until he lost his job in 1946, at which time he started to drink more. In May, 1949, when he got into trouble on a sex charge, he says he started drinking heavily. He states that he jumped bail and went to Mexico while these charges were pending against him, and while there he was drunk every day.

[fol. 1022] **Sex and Marital History:** At about 17 years of age he had his first heterosexual experience. He claims that heterosexual experience with several girls before marriage was normal. Masturbated some at 19 or 20 and later occasionally when the need arose. He met his wife on a trip to Panama in 1915 and married her after 11 days courtship. His wife is still living and is confined in one of the California State Hospitals for mentally ill. Since his wife went to the hospital he has had occasional heterosexual relations.

He did not know, he says, that his wife had had a mental breakdown before marriage until a few years ago. He has one married daughter. He denies any extramarital sex relations before his wife went to the hospital.

He states that his first interest in little girls was over two years ago. He denies any homosexual interest in the past and he says that he didn't know that he had had any sexual interest in little girls until after he lost his job with Van de Kamp's.

"I met a little girl five and a half or six years of age in a court where I lived. I played with her after she came to see me several times. She came in and laid down on the couch and pulled her clothes up. Later I started playing with her genitals. This caused a pleasant sensation. I did this once or twice a week for six or seven months. The address was 6262 Verdugo Road. There were some nude pictures there at the house left by someone and the police [fol. 1023] learned about these, and this is when the trouble started." He denies keeping these for exhibition. He says the children found them in going through the things in the garage. He says he has never had a compelling urgency to play with the genitals of young girls and that he had never practiced exhibitionism or fellatio.

Military Service: He has had no military service and he has never become a citizen. He has lived in Los Angeles since 1924 except for short trips away.

Crimes and Previous Arrests: He denies ever having had any trouble with the law before May, 1949.

Present Difficulties: The accused says he started sexual play with Janet, the little girl at 6262 Verdugo Road about five and a half years old, after he had started sex play with Linda; and that he was arrested May 5, 1949, and jumped bail after staying at his daughter's home three or four days.

"I went to Mexico May 8, 1949. Came back the first time July 3rd early in the a.m. Went back to Mexico July 5th. I stayed in Mexico until Friday, November 11. I stayed in Tijuana and Ensenada. I was drunk all the time until the 2nd of July. Was arrested on November 14, charged with the murder of Linda on November 11." He freely talked about his difficulties sexually and the present charges against him. He tells about sex play with Linda before he

started with Janet about two weeks before, he thinks. He [fol. 1024] explained that he had been drinking all night on the 10th and he did not sleep any until 4:00 a.m. because he saw the clock, as it was on the Frigidaire near where he was sleeping at his daughter's home.

Says he went to town about 7:00 a.m. after he made some coffee. Then he came back to his daughter's house about 1:30 p.m. His daughter was trying to sleep, so he had some more drinks of liquor. His daughter left with Chella, his granddaughter, and Linda came over to the house about 3:40 p.m.

"I kissed her and she kissed me and I played with her by putting my hand under her panties and then she said, 'Let's go outside.' Then I tried to put her on the bed, and she screamed after I started playing with her again. I placed my hands on her throat to stop her screaming. I was so nervous then I didn't know what I was doing. I knew if people heard I would be in trouble. After I choked her I could see her lying there lifeless. I saw some neckties hanging nearby, and I took one of these and tied it around her neck. I don't know why I did it because she was dead anyway. I was so nervous I didn't know what to do.

"I took a blanket from the other bed and put it on the floor. I wanted to lift Linda onto the blanket, but I was too weak and sweaty and nervous. I tried to pull her off by the legs, but my hands were so slippery I could not hold [fol. 1025] on. Then I tried to pull her by the panties and they busted. I wrapped the blanket around her and went to the kitchen to get a hammer and struck her on the head through the blanket. Then I put the body at the incinerator and went to get an axe to strike her with. I got a knife and jabbed her in the back of the neck. Then I covered her with boxes. I went to the house and looked around and found the little panties on the floor. I put them in the incinerator, turned the fire off under the potatoes in the kitchen. I didn't know what to do.

"I got my coat and went on the red carline to Ocean Park. Here I picked a place for suicide. Then went back to the cocktail parlor, had more drinks. Later I decided I would give myself up, but I wanted to call my daughter and son.

in-law and John Gray and my old boss at Van de Kamp's before I did."

The defendant explained that he had been under considerable emotional strain, as his son-in-law had told him that he must give himself up to the police. This was before the alleged crime. This he thinks had something to do with his heavy drinking.

General Observation: The defendant is a mild appearing man. No abnormalities observed. Appears anxious to cooperate. Answers questions freely and talks freely about his present difficulties, often stating, "I don't know why I did these things. I just can't believe it." He is [fol. 1026] coherent and relevant in his answers and never raised an objection to the questions asked.

Mental Status:

Orientation: He is oriented in all three spheres—time, place, and person. He knows the day of the week, the day of the month, and the year. He seems to have a good memory as to dates and doesn't complain of any difficulty in remembering things.

Emotional Status: He says he feels as well as one could under the circumstances. He says incarceration is hard on him and that it is enough to drive a man crazy. There appears to be no abnormal depression or elation and he seems to have a good insight into his present situation. He realizes that he is charged with a serious crime and that the consequences could be severe. He freely expresses that the charge against him is a violation of the law and the rules of society.

Hallucinations and Delusions: None made out. No bizarre ideas, no ideas of persecution, and no grandiose ideas. He says he sleeps reasonably well.

Physical Examination: Physical examination reveals nothing of any special significance. Pupillary reflexes are normal, the blood pressure 140/85 (left arm), Romberg is negative, and patellar reflexes are equal and active. Test phrases were satisfactory.

[fol. 1027] **Discussion:** The defendant has a good work record and reputation, it appears, up until 1946 anyway. He has been a hard worker with little time for recreation and

play, and when he lost his job he did not know what to do with himself or how to spend his time. At this time, according to his statements, he began to drink more than he had in the past. Sex interest in little girls developed. He found some pleasure in this and says that he enjoyed doing this because little girls seemed to get pleasure out of it. He claims that he was drinking heavily at the time of the alleged crime. This could well have had something to do with his poor judgment and reasoning at the time of the alleged crime.

There is no evidence of a psychosis found. He is able to construct the details of the crime very well. He realizes the nature and consequences of his acts. After his arrest in May for sex play with a little girl it seems he developed a lot of fear for what would happen for committing acts of this type. He ran away from this charge, forfeiting the bail. Apparently he had made little effort to seek treatment and get help in his difficulties. He tells about going to a Dr. Maxter or Baxter, some specialist, for some shots to take away the sex abnormal desires. Says he had about five shots. He says this doctor was recommended, he thinks, by his attorney.

When questioned specifically about an incident in Honolulu [fol. 1028] in 1941, he says nothing had taken place between the little girl and himself, but he was warned to stay away from her. This was the only interest in little girls, besides Linda and Janet, that the examiner was able to elicit.

Opinion: That the defendant is legally sane, knows right from wrong in the circumstances in which he acts, and is able to confer intelligently with counsel in his own defense. It is further the examiner's opinion that this was true at the time of the alleged criminal acts.

Respectfully submitted, (S) Robert E. Wyers, M. D.

REW:vfb

Victor Parkin, M. D., 417 South Hill Street, Los Angeles 13, Calif. MUtual 2582, December 27, 1949.

Judge Charles W. Fricke, Superior Court, Department 43, Los Angeles 12, California.

In re: Fred Stroble, Case No. 130013.

Dear Judge Fricke,

In response to appointment by the Court, under the provisions of Section 1027 of the Penal Code, I made a psychiatric examination of the above named individual in the County Jail, on December 22, and also read the reporter's transcript of the preliminary examination of November 21, 1949, and familiarized myself with the individual's response to questioning at that time. I herewith respectfully submit the report of my findings.

Fred Stroble is 68 years of age. He is married. His wife is an inmate in the Norwalk State Hospital. He has one child, a married daughter, 31 years of age, and is the grandfather of two children. His father died when the individual was 10 years of age. His mother married again and died at the age of 54. He was born in Austria and [fol. 1030] brought to the United States in 1901. He is the fourth of eight siblings. He received a fourth grade education, attending school between the ages of six and eleven years.

Medical History:

He was frail as a child and quotes his mother as saying that there was no disease that he did not have as a child. At seventeen years of age he had a severe attack of arthritis and was in the hospital for about 4½ months, and states that for about ten days he was delirious. He also had a seriously infected finger, which disabled him for about six weeks.

He had an automobile accident about 13 or 14 years ago, when he was knocked down by a car and received a severe injury to his head and was unconscious when the ambulance came to take him to the hospital. He has a scar on his

forehead as a result of the injury to his head. He had another automobile accident about 10 years ago, when he was knocked down while crossing the street, and was rendered unconscious. He had been drinking at the time.

Occupation

He gives his occupation as that of a baker. He worked at one place, the Van de Camp Bakery, for 21 years. He lost his job there because he refused to cross a picket line at the time that bakery was being picketed. He says he was not in sympathy with the strike, but was afraid that if he crossed the picket line he would be beaten up. He has done no work since then. He had saved about \$10,000 and [fol. 1031] has been living on that. He states he had been a steady worker for about 40 years up to the time he lost his job at Van de Camp's. He says he made many attempts to get back to Van de Camp's, but they refused to reinstate him. He says he always lived in hopes that they would change their mind, as he was happy there and felt that he was one of the family. They were a small concern when he began working for them in 1924, and he felt that they were the only firm he could be at home with, and did not want to work for anyone else if he could not work for them.

Present Mental Status

When asked why he is where he is, he replied that he is in the County jail and that he was arrested on November 17, charged with murder. His attitude is cooperative. He talks in a low, quiet voice. He is completely oriented in all spheres and answers all questions promptly and relevantly. His mental content is free from delusions or delusional trends. Emotionally, he shows no pathological depression or elation. His manner is serious and he discusses the situation in which he finds himself with intelligence and clear insight into the seriousness of the charge against him. He knows the nature and quality of the act with which he is charged. He knows it is murder, and knows that murder is wrong and punishable by capital punishment.

[fol. 1032] Developmental History.

I questioned him closely concerning the circumstances that led to his arrest, in an endeavor to ascertain his mental condition at that time, and for a considerable time prior to that.

He married in 1915, in Panama City, and shortly thereafter learned that his wife had been insane at about 18 years of age, and had been cared for in a hospital in New York, in Hyslip, Long Island. She was insane during most of their married life. At one time she became badly disturbed at Ardmore, Oklahoma, and also in Yuma, Arizona, where she was in the State Hospital for about two months. In 1940, she was in the hospital for the insane in Honolulu. She was committed to the State Hospital at Norwalk, California, in 1944, where she now is. He says he visited her every week end up until shortly after he lost his job at Van de Camp's, when his visits became less frequent, and took her everything he could think of to make her comfortable. "My life was just full of trouble. No one can realize it."

He traces his present difficulty back to the loss of his job with Van de Camp's. He began to drink heavily to overcome his feeling of depression, and became more and more addicted to the use of alcohol as time went on. He says, "I held myself together for about a year, and when I saw I could not get back, I just drank to forget." He became a chronic alcoholic, and would drink any alcoholic [fol. 1033] drink, wine, whiskey, or beer, but mostly beer, and says he was not sober for the past 2½ to 3 years.

He was arrested in May 1949, charged with violation of Section 288-A, involving a 15-year old girl. He jumped his bail on this case and went to Mexico. He states he drank more in Mexico than he did in the United States. He would drink Taquilla, nearly a pint a day, with other drinks such as whiskey and beer. He had just returned from Mexico and presented himself at the home of his married daughter, Mrs. Hausman, who advised him to give himself up, and states he intended to do so. His son-in-law, Mr. Hausman, also told him to give himself up, and not to come into his house again. Mr. Hausman called up John Gray, the attorney, that Sunday afternoon, about 10 p.m., telling him that

he was going to bring his father-in-law to him the next day, and surrender him.

He says, "That made me feel pretty bad, and I could not sleep until about four a.m. About five a.m., I got up and had some more drinks of whiskey, wine and gin. Then I made a cup of coffee and went down town. Then I had some drinks at a bar on Fifth Street, between Spring and Broadway. I didn't know what to do, so I went back to my daughter's house, at 2063 South Crescent Heights, near Culver City." He says his daughter was not yet up and dressed and that she told him she was to take Chella to a party that afternoon, about two p.m. He says, "I had [fol. 1034] some more drinks and she sent me to a dime store for some ribbons for Chella. She left about 3:15 that afternoon. I was sitting in the front room, drinking whiskey, and saw Linda's mother through the window in her car, with Linda. They were on their way to school to pick up Linda's brother." He thinks they returned around a half-hour later. He saw Linda coming across the street about four p.m., and let her into the house. He says, "I had a chocolate bar in my pocket and gave it to her. It was very soft, so I got one from the ice box for her and gave it to her. We then went into the bedroom together, as we had done before at different times." Linda asked for Chella, and he told her she had gone to a party. He says he sat on the bed and she kissed him and he drew her to him and squeezed her and started playing with her privates, and that he put his finger in her vagina. He says she wanted to go out and play, but he said "Let's play a little bit here." He put her on the bed and started playing again. She insisted on going out, and struggled to get away. Then she started to scream. "I got afraid. I was very nervous and trembling. I don't know why she screamed. The window was open and I was afraid the noise would be heard. I grabbed her by the throat to stop her screaming." He says perspiration was pouring off him. "When I saw her lying lifeless I got off the bed and tied a neck tie around her throat. Then I went to the kitchen and had another [fol. 1035] drink. I did not know what to do. I was lost then."

He states he took a blanket off Freddie's bed and laid it on the floor. "I tried to lift her up and put her on it,

but I was too weak. I took her by the legs. My hands were so wet with sweat that they slipped. I got her by her panties so I could pick her up. I finally managed to get her onto the blanket and covered her up." At this point, he put his hands to his face and said, "I can't believe it." He said, "I was afraid someone would come into the house. I couldn't leave her lying there. I took her out to the incinerator and covered her with the blanket. Then I got a hammer from the kitchen. I felt under the blanket for her temple and then hit her on the temple with the hammer. It seems as though something made me do it. I returned to the kitchen and got an ice pick and stabbed her where I thought her heart was, first in front through her chest, then turned her over and stabbed her on the right side, because I wanted to be sure the pick would go into her heart. Then I went to the garage and got an ax, and I hit her a couple of times on the back, low down, and a couple of times on the head. I don't know why I did this, but I remember using the ax. Then I went back to the kitchen and took a kitchen knife about that long (indicating about eight inches) and stabbed her in the back of the neck. I had seen that done in the bull fights in Mexico. If she wasn't dead, I knew that would kill her. I didn't want her to suffer." He states that [fol. 1036] he then covered her with cardboard boxes. He says, "I went back into the house, walked into the bedroom, picked up her panties, and took them to the incinerator to get them out of the house, but I don't know why." Then he returned to the house and had a drink. He could not think what to do. "I said to myself, 'I might as well kill myself and jump off the pier'. There was no other way out. I was up against it."

Then he states that he went to Santa Monica and picked out a spot on the pier that he intended to jump from, but there were too many people there, fishing from the pier. He says, "I thought that the people would quit fishing when it got dark. I talked to somebody and was told that fishing was often better after dark. Then I went and had a beer and a whiskey, and looked at a television for a while. Then I walked up and down outside and was very jittery. I went into one bar after another. I could think of nothing else but getting rid of myself. After a few more drinks I talked

with people and my nerves relaxed. Then I got a room in a hotel and returned to look at the television, and saw a wrestling match. I remained in Ocean Park about three days, then came to Los Angeles. I saw my name in the papers and read about the crime. I wanted to give myself up. I knew I would be punished. I was sitting in Leighton's Cafeteria intending to call up my daughter and son-in-law and Attorney Gray, and then to call Van de Camp's and tell [fol. 1037] them that this is the end. I did not try to hide. It seemed to me the sooner I was picked up, the better."

Sexual History

His marital relations with his wife were not satisfactory for sometime prior to her commitment to Norwalk; however, he had sex relations with two other women since his wife's commitment, who lived in the same court where he lived. One of these women was a heavy drinker. In view of this, it cannot be said that suppressed libido contributed to the development of sex psychopathy. A tendency to sex psychopathy showed itself as early as 1941, when he was caught criminally molesting a 9-year old girl in Honolulu. He was discovered by a teacher and the matter reported, but he was never arrested. Again he molested a little girl named Jeannette, about 5½ or 6 years of age, who lived near his home.

He had been indulging in sex play with Linda Glucoff since he first knew her, about two years ago. He says that he would play with her privates almost every weekend. He says he thinks she was then about 5 years old, but big for her age. He states this took place either in his daughter's home when she was away, or in the garage. He says that in spite of this sex play that he indulged in with these children, he did not have an erection.

Summary.

A note on the effect of ethyl alcohol upon the human [fol. 1038] organism is germane here. Ethyl alcohol, pharmacologically, is classified as a narcotic poison, and may be useful medically, but its abuse by long continued and excessive use temporarily paralyzes the inhibiting function of the cerebral cortex. This releases lower archaic levels of be-

havior unrelated to the light of reason. The return of normal functioning of the cortex, or sobriety, causes the individual to disclaim this behavior as his, if remembered. Frequently the behavior is not recalled. A characteristic symptom in an acute exacerbation in chronic alcoholism is intense fear. Another effect of excessive use of alcohol is the disintegration of character, with regression to juvenile attitudes. This effect made it possible for Stroble to derive satisfaction from sex play with the child, Linda Glucoff, for a considerable time prior to its culmination in her death and the macaberesque mutilation of her body.

When closely pressed for his reason for killing the child, he put his hands to his head, moving his head from side to side, and said, "There is no answer for it. It does not seem real to me. Seems like I have waked up from a bad dream; and yet I know I did it. I remember it. I must have been insane when I did it. I couldn't hurt anything. I thought just as much of Linda as my own granddaughter. She was so nice. Right now I can't believe I did it, but I know I did. The night before, when my son-in-law said [fol. 1039] 'You will have to give yourself up,' it upset me more than ever. It worked on my mind and then I drank more and more. It seemed like someone behind pushing me, and I could not stop, or sleep or eat. I was jittery and afraid."

He described in detail what he did on the day of the murder, from about 6 o'clock in the morning until the end of the day, when he engaged a bedroom in a hotel in Ocean Park. His memory for details concerning his behavior with the little girl, her murder, and the disposal of her body shows that he preserved contact with his environment. In pressing him for a motive for killing the child, he says he thinks it was his intense fear of being found out again, repeating the offense for which he was then under indictment. He says he felt as though there were something pushing him—something behind him. He started and could not stop.

The defendant knew that he was doing wrong when he was playing with the little girl—in fact, it was his sense of wrong-doing and fear of detection that impelled him to destroy the child to silence her cries. Then his awkward

attempts to conceal the evidence of his crime by covering up the body, shows that he knew what he was doing and that what he was doing was wrong; so that, bearing in mind the legal concept of insanity: that is, that if the individual knows the nature and quality of his act, and the [fol. 1040] difference between right and wrong in relation to his act, he is to be considered legally sane and responsible for his behavior. The defendant's mental state fits into this framework.

Diagnosis: Sane.

Very truly yours,
(Signed) VICTOR PARKIN, M.D.,
Psychiatrist.

VP:zs

[fol. 1041]

Exhibit No. 54

January 2, 1950

Re: Joint examination and opinion on the psychological and mental status of Fred Stroble by Dr. D. B. Klein, M.D., and Jacob Peter Frostig, M.D.

To the Public Defender:

This is to certify that on the thirty-first of December, 1949, the above mentioned examiners examined Fred Stroble, 68, of the County Jail, Hall of Justice.

Their opinion is based on the examination on the Wechsler Memory Scale, on a portion of the Minnesota Multiphasic Personality Inventory, on the Rorschach Test, on the Clinical psychiatric examination of the accused, and on the subsequent perusal of the psychiatric opinion rendered by Doctors Crahan, McNeil, and Wyers, as well as on the autopsy reports.

Although the tests were administered prior to the clinical examination, and the conclusions drawn by Dr. Klein, for the purpose of a more lucid presentation of the case the psychiatric part will be presented jointly and test results will be included wherever they substantiate or contradict the results of the clinical examination.

Clinical Examination. The accused appears to be of the

body type described by Kretschmer as associated with depressive fearful, or related reactions. Observation confirms this as the accused appeared throughout the joint [fol. 1042] examination which lasted approximately six hours in no way withdrawn or seclusive. His emotionality was congruent with the stimulating circumstances. He appeared to be at ease with the examiners, answered all questions readily and immediately, and did not hesitate in a manner suggestive of evasiveness. No pathological symptoms of thinking, speech or behavior could be detected.

Both examiners were impressed by one observation which merits explicit emphasis. This is to do with the fact that the subject's emotionality, although qualitatively in accord with normal expectations was, nevertheless, quantitatively inadequate. This was especially evident when the examiners permitted him to describe the killing in his own words. Although his face became somewhat reddened, there was neither weeping nor any manifest tension, nor other sign of emotional distress.

Life History. In as much as the psychiatric examination of Dr. Crahan contains a most excellent and thorough description of the accused's past history, these examiners consider a repetition of the biographical data superfluous. In the light of their own examination, as, well as Dr. Crahan's no evidence has been obtained of any pathological traits in the past history of the subject up to the year 1946. The accused was born in Austria and came to the United States at about twenty years of age. He led the life of the average immigrant and was employed as a baker. As many [fol. 1043] immigrants, he drifted slowly from New York to Wisconsin, to Los Angeles, where he settled in 1924.

He married at the age of thirty-four. It appears to these examiners that this marriage has been one of the greatest injuries of his life. Soon after his marriage his wife became mentally ill and had to be placed in State Hospitals most of the time. She became progressively worse, and was finally committed to Norwalk where she has been confined continuously up to the present time. Thus, since 1942 the subject has lived alone in an apartment of a court. According to his own confession, even at the age of sixty-eight, he was able to have sexual relationships with two

women. The Rorschach Test shows strong biological drives. It may be reasonable to assume that at his age and in his financial situation, he was unable to gratify his sexual needs in adult fashion, and consequently, turned or reverted to less mature and socially unacceptable forms of sexual expression. The fact that he readily established a friendly relationship with children facilitated their mutual intimacy. It is interesting and may be important to stress that he was always interested in children and animals, and on the Rorschach Test shows evidence of an immature personality which may at least partly explain his behavior.

Having been without employment since 1946, he became more and more engrossed in his relationship with children, played all day with them, so that finally he had attracted [fol. 1044] a group of approximately seven youngsters. He maintains he does not know how the suspicion of his sexual activities arose. He was arrested, however, on May 5, 1949 on the charge of molesting children, and was released on a bail of \$500.00. Despite the fact that he was informed that he would probably be placed on probation and not be imprisoned, he, nevertheless, behaved in a somewhat unrealistic fashion; for unmindful of the earnest pleas, both of his son-in-law and his lawyer, to report to the authorities, he failed to do so and acted like a panic-stricken fugitive. He would go to Mexico, come back for a few days and stay at the home of his daughter. Then he would get suspicious of some of the people around, thinking that they were policemen looking for him, and return again to Mexico. This pattern of behavior was repeated over and over again, until in November he returned for Thanksgiving. It may be noted that from the time he frequented his daughter's home he soon attracted another coterie of children who evidently regarded him with sufficient friendliness to call him "grandpa." Then on November 11 the criminal deed for which he is now accused took place. The examiners permitted the accused to describe the deed in his own words, and also the subsequent four days of fugitive behavior. In the absence of verifying data the examiners are suspending judgment regarding these facts as reported by Mr. Stroble. [fol. 1045] Personality. As has been stated, psychiatric

examination did not show any major defects of the personality except the following:

1. Since 1949 the subject started to drink heavily. There were no overt signs of alcoholic change of personality, although the increase of his timidity and the tendency to panic reactions may have been the result of his addiction. It is known that fear is very frequently in some personalities the most pronounced symptom either of alcoholic intoxication or of the subsequent hang-over.
2. Although no major disturbances of thinking and speech were noted, under emotional strain the subject showed a tendency to circumstantiality, to sticking to details and to circling back to them. It was noted that in his efforts to answer a question, the subject would lose sight of the essential meaning of the question and bog down in an account of inconsequential details. For example, when permitted to describe the happenings of November 11 in his own words, he placed as much emphasis on the size of the glasses of beer he consumed and the exact location of the tavern as on the gruesome aspects of the killing.
3. When under emotional stress he exhibited difficulty in recalling nouns.

The foregoing features arouse suspicion of the existence of a beginning arteriosclerotic deterioration of the brain which was subsequently confirmed by finding a blood pressure [fol. 1046] sure of 170/80, slightly accentuated second aortic sound, slightly sluggish pupillary reaction, and spastic arteries (silver streak) in the fundi of the eyes. A slight tremor of the eyelids and hands may not be of clinical significance.

Examination of his memory functions by means of the Wechsler Memory Scale gave him a Memory Quotient of 93. This is well within normal limits, so that significant pathology of memory processes can be ruled out.

As has been indicated, Mr. Stroble impressed the examiners as trying to be truthful and cooperative. To check on this impression a portion of the Minnesota Multiphasic scales was administered, namely the portion designed for the purpose of detecting malingerers and falsifiers. The subject's handling of this material left no doubt about his

freedom from any deliberate attempt to mislead the examiners by intentional falsification of reactions.

The *Rorschach* method of personality appraisal revealed the subject to be a person of dull normal intelligence, sufficiently in contact with reality to handle routine jobs that do not call for initiative, complex decisions, or even a modicum of original thinking. Deliberate planning of a crime, for example, would call for more imagination and flexibility than this man possesses. This does not mean that he would be incapable of violence, for his Rorschach indicates powerful inner drives that are held in check by external controls [fol. 1047] in the way of the policeman on the beat, to put this metaphorically, rather than by solicitous concern for the welfare of others. In fact, the subject is relatively incapable of putting himself in the place of another and sharing his joys or sorrows in emphatic fashion. Emotionally he is far too immature for this. His outlook is essentially egocentric and more asocial than antisocial. He is governed more by fear than by love. The latter sentiment would be almost impossible of achievement in a person of such shallow emotional make-up and such incapacity for identification with others. There is no evidence of any clear-cut psychotic trend. On the basis of his Rorschach Mr. Stroble is to be declared sane. He is a dull, timid person rather than a viciously aggressive one. His pronounced avoidance of the colored portion of the cards is especially significant. There was no utilization of red, for example, to give expressions to fantasies involving blood or bruises as might be expected of sadistically inclined sexual psychopaths. However, his lack of social sensitivity renders him capable of violence when frantic with fear. This contingency is not to be confused with the violence of sadistically disposed sexual deviants. It is more the violence of panic than of lust. Without adequate supervision, even though sane, a person like this is always potentially dangerous to community safety. In brief, Mr. Stroble's Rorschach pattern accords with the diagnosis of Psychopathie [fol. 1048] Personality without psychosis.

The examiners in the time at their disposal were unable to ascertain either the onset or the precise nature of the subject's sexual psychopathy, particularly as related to

his molestation of children. They were unable to find any trace of sadistic traits in his life history or in his present personality. Nor were they able to detect any masochistic traits which are usually associated with the presence of sadism. On the contrary, it appears from the observation, from the life history, and from the tests that the subject shows timid, at times fearful traits, which increased considerably following chronic alcoholism and arteriosclerotic changes. It is their considerate opinion that his refusal to surrender to the authorities after his first offense on May 5, 1949 shows traits of panic and of an inability to face life difficulties. His dull-normal mentality and the constant fear of being apprehended for his first offense makes it most probable that the murder was committed as the result of panic and was purely incidental to his sexual intrusion upon the individual. On this point the murder is most properly interpreted as the outcome of a longstanding panic state in a rigid personality rendered even less flexible by the consequences of chronic alcoholic indulgence and arteriosclerotic processes. During the course of our examination the subject conducted himself like a sane individual in the [fol. 1049] sense of being able to differentiate right from wrong.

Respectfully submitted,

(Signed) JACOB PETER FROSTIG, M.D., Visiting Professor, Dept. of Psychology, Univ. of So. Calif.; Consultant in Psychiatry and member of Staff of Cedars of Lebanon Hospital; Member of Amer. Psychiatric Assoc.; Former Supervisor, Medical Director and Director of Research of the Psychiatric Institute, Atwock Poland (1932-1938); Former Lecturer in Psychiatry and Research Associate, School of Medicine, Univ. of Calif. (at San Francisco); In charge of Post-Graduate Training and Research of the State Dept. of Medical Institutions, State of Calif. (1939-1942).

JPF

[fol. 1050] (Signed) D. B. KLEIN, Ph.D., Prof. of Psychology and Director of Psychological Service Center, Univ. of So. Calif.; Fellow of the Division of Abnormal and Clinical Psychology of the Amer. Psychological Assoc.;

Diplomate in Clinical Psychology of The Amer. Board of
Examiners in Professional Psychology.

D.B.K.

[fol. 1051]

Exhibit No. 55

November 17, 1949

Mr. William E. Simpson
District Attorney
Hall of Justice
Los Angeles 12

In regard: FREDERICK STROBLE

Dear Mr. Simpson:

This is to advise that upon your request, I have on this date, examined Mr. Frederick Stroble and the following report is submitted.

Subject's Narrative:

Personal History:

Subject is a white male, age sixty-eight, born on October 8, 1881 in Austria. Occupation, retired baker.

Family History:

Subject's father died at age fifty-one, cause unknown, at subject's age eleven. During his lifetime he was employed as a brewmaster. His mother died at age fifty-four, when subject was about seventeen years of age, cause unknown, and was employed at domestic work to support her family of twelve children.

Education and Occupations:

Subject attended school in Austria to the equivalent of the fourth grade, at age fourteen, when he became an apprentice to a baloney-maker. When he had finished this [fol. 1052] apprenticeship he came to the United States, at about eighteen years of age, working his way with New York City as his destination. For some time he was unable to find work because of strikes and went back and forth to

Europe three or four times until he had enough money to stay in America. His first trip was made in 1901.

He continued to look for work but the strikes continued. Finally he found employment in a small town about thirty miles from New York where he met a baker, Fred Bauer, who encouraged subject to learn the baking trade as baloney making was difficult and proving to be non-profitable. Subject agreed with this as his hands were constantly irritated by the use of salt petre and other ingredients used in baloney making and consented to learn baking, offering his services without salary. Mr. Bauer would not agree to this and paid subject \$5.00 a week for his efforts which in those days made him a "rich man". After working for Bauer several years, he returned to New York where he was employed by the Fleishman Yeast Company. This job terminated because of a strike and from that time until he came to California in 1924, he worked at various small jobs in small communities as a baker. During the first World War he claims to have been drafted in the Army but that the war was over before he was called.

Upon arriving in Los Angeles he was employed by the Van de Kamp Bakery at their original Main Street address, [fol. 1053] shortly after the firm started in business, and continued there until 1946. At that time he went on a vacation and upon his return found strikers surrounding the plant. He did not want to go through the picket lines, although he was not a union member, and later when the strike was settled he was called in to the office and told by his employers that they were very disappointed in him, feeling that he was the "one man who would have stayed loyal to the firm." Because of this he was discharged and although he called his former employers as often as three times a week for about two years, they consistently refused to re-employ him. Since that time he has had no work, has lived on his savings and "got into trouble".

Asked if he was a naturalized citizen of the United States, subject replied that he was not, but rather haltingly told of having taken out first papers several years after coming to America and that although he had every intention of completing his citizenship, he had never accomplished this. After a few minutes he asked to correct this statement,

admitting that he had never applied for citizenship and claiming that he wanted to "stay with the truth".

Habits and Recreations:

Subject admits to the use of intoxicants, stating that in the past three years he has used more alcohol than at any other time during his life, consuming about ten bottles of [fol. 1054] beer and three or four shots of whiskey daily. The degree of his subsequent drunkenness would depend upon whether he ate while he was drinking. He claims that during the many years he was working, his drinking was restricted to week-ends or after hours and rarely to excess. He does not smoke and denies the use of narcotics. He has no hobbies and no particular recreational interest, stating that since he has not been employed he has been "lost", with nothing to do. While working his habits were moderate as he would be tired at the end of the day and content to come home to his dinner and read the paper or magazine. On several occasions he went fishing with his son-in-law and formerly enjoyed playing pinochle. While in Mexico he learned to play pool but did not like the "gang" in the pool parlors and preferred to play this game in the home of his son-in-law who owned a large four-story house on Doheny Drive in which they had a large recreation room and pool table. Recently he has gone to see movies about twice a week; listened to his radio, preferring comic programs; and the rest of his time loafing and going in and out of bars.

Marital and Sex History:

At age eighteen subject first had sexual intercourse and states this was repeated sometimes once a week and sometimes only once in two or three weeks, with girl friends as he did not have enough money to pay prostitutes.

In 1915 he was married to a young woman who he met on [fol. 1055] board ship enroute to San Francisco at the first sailing through the Panama Canal. This marriage has continued to the present time, although in 1943 while in Honolulu and, subject believes, as a result of the bombings during the war his wife became mentally ill and violent and it was necessary to have her committed to the Norwalk

State Hospital. He understands that she has recently been transferred but does not know to which institution and when the Camarillo State Hospital was mentioned, he believed that to be the place of her present commitment. He states that after this occurred he found that she had suffered a "nervous breakdown" at the age of eighteen for which she was institutionalized for about three months.

There is one daughter resulting from this union, now thirty-one years of age and the mother of two children. His son-in-law has been very friendly to subject who has spent long periods of time in their various homes. For some time they maintained a large home in Honolulu where subject visited them each year. The son-in-law is associated with the Publishers' Guild who are publishers of encyclopedias and medical works. Although he enjoys visiting with his daughter and her family he has always tried to maintain a place of his own.

During his married life he had coitus once or twice a week and denies extra-marital relations. Since then he has intercourse with friends or prostitutes about once in two [fol. 1056] weeks, the last occasion being in Tia Juana about five weeks ago. He admits to masturbation "when-ever he has to", about once every two weeks but denies homosexual experience or desire.

Subject states that his only sex problem is that which is responsible for his present predicament. He has always been extremely fond of young children, ranging in age from four to ten years, and that this affection is created by their appearance, nice manners, politeness, their form and "way of acting". He enjoys "playing with them" but denies that he has any desire for intercourse, contenting himself by fondling them, kissing them and placing his hands upon their private parts and rubbing the clitoris with his fingers. The little girls with whom he played, and he admits to four of them, seemed to like this "play" and he, in turn, enjoyed making them happy. While fondling them he would press his body to theirs, "squeeze" his penis against them until he experienced an emission.

He admits that while living at 6262 Verdugo Road quite a group of children came to play in his garage where they found many Nudist magazines, although subject denies their

purchase. The children enjoyed these and subject played with all of the children but his chief affection was given to one little girl in particular. He denies having exposed himself to the children, of trying to place his penis between their legs, or attempting to have intercourse with them. [fol 1057] He admits to having played intimately with a little girl in Honolulu, with the child on Verdugo road, another child and his present victim, claiming that he loved this latter child more than any little girl he ever knew. The group of children who played in his garage at Verdugo Road included boys as well as girls. He claims there were long intervals between his affections for these various children and that he had never previously had similar associations with children until the time he was discharged from his bakery work, at which time he never got into trouble because he "gave all of his energy to his work", stating that the first such incident occurred about three and a half years ago. He admits to having placed his mouth upon the private parts of these children "only a few times to find out what it was like".

Previous Illnesses, Accidents and Surgery:

Subject denies serious illness or operation. About ten or eleven years ago he suffered a laceration of the forehead for which he was treated at the Los Angeles County General Hospital for a period of two weeks. Examination at that time did not reveal a fracture. On one other occasion, on a Friday evening after work, he had a few drinks with friends and while going across the street to get into a friend's car, was struck by an automobile, the only injury being to his leg. Subject denies venereal disease, fits, fainting spells or mental commitment. With the exception of [fol. 1058] his wife, no other family member has been so committed.

Previous Legal Involvements:

On May 5, 1949, subject was arrested at 6262 Verdugo Road and was charged with contributing to the delinquency of children, approximately seven parents signing the complaint. He admits to having "wrestled and played" with these children and with one little girl in particular, admitting that he fondled and played with her private parts.

He failed to appear for trial and a warrant for his arrest had not been served. On the day previous to his present alleged acts commission, his son-in-law and daughter had talked to him about this matter, telling him that he could no longer "hide out" in their home and must consult their attorney, Mr. Gray, and he must give himself up to the police. He agreed to this but early in the morning changed his mind and left the house without telling his family. It was upon his return to their home that the present alleged act occurred.

Present Involvement:

Subject states that for the past two months he has spent most of his time at Tia Juana, Mexico, going back and forth several times and staying for five weeks on the last occasion. He became lonesome for his grandchildren, however, and decided to come home, stating that if it wasn't for these children he would "never come home". On Mon-[fol. 1059] day, November 14, 1949, he had left home early in the morning, after promising his son-in-law that he would give himself up to the police on a previous charge of molesting small children but had returned home early in the afternoon.

He states that he cannot understand his alleged act, the murder of six year old Linda Joyce Glucoft, claiming that he loved the child more than anyone in the world. He admits to have "played" with her on many occasions previously, that he would hold her on his lap, kiss and fondle her, place his hands upon her private parts and rub her clitoris, which seemed to please the child and she would smile at him and welcome his love-making. On the day in question, however, he took her into his grandson's bedroom and placed her on the bed but when she objected to this and asked that they go outside and play, he asked that "we play in here awhile". Subject admits that he had been drinking and that when she repulsed his advances he was not willing to let her go, although he did not want to force her. He managed to push her back on the bed and took off her panties but as he started to play with her she screamed. This scream instantly frightened him terribly and he thought of this acts danger if he was apprehended in view of the previous

charges against him. He placed his hands around the child's throat to stop her screaming and held her there until he realized she was unconscious. Not certain that she was dead, he went to get a necktie and garroted his victim. [fol. 1060] By this time he was frantic, trembling, and perspiring profusely, so that he was unable to handle the child's body. Taking a blanket from the bed he opened it upon the floor and placing his victim on the blanket, wrapped it around her. Then, fearing she might still be alive and suffering, he went to the kitchen to get a hammer, brought it back and hit the child upon the head with this hammer several times. Still not certain that she was dead, he went back to the kitchen and got an ice pick with which to stab her through the heart but he was so nervous that he could not remember on which side the heart was located and struck her with the ice pick three times, on one side once, the other side twice. Not convinced that she was dead and not suffering, he then went to the garage and brought back an axe, with which he struck the child twice at the base of the spine and once on the neck. It was then he thought of a bull fight that he had seen in Mexico and of the small dagger used at the kill, and again returned to the kitchen to get a short knife, which he attempted to plunge into the back of her neck but was unable to penetrate the neck more than approximately one-half inch. He then took the prostrate body, wrapped in the blanket, to the incinerator.

Almost immediately after this he left the house to go to Ocean Park, feeling "this is my last day" and intending to get drunk and to drown himself. He went from bar to bar and then walked out on the pier to find a place to jump [fol. 1061] into the ocean. Finding the pier roped off and a jumping place not too convenient, he decided to wait until the following day, to drink some more and then jump off the pier. After stopping at several bars he found a rooming house advertising rooms at seventy-five cents and up, applied for one of these rooms and was given a room "much cleaner than he had expected". He then went to the wrestling matches and returned to his room at about midnight but was unable to sleep until nearly morning. He was awakened by a cleaning woman in the morning and after dressing went to the corner drug store for breakfast. He

then went from bar to bar and finally walked out on to the pier to watch men fishing. While on the pier he saw the body of a man being taken from the water who had previously committed suicide and at that point decided not to kill himself, that "as long as he would have to pay for his act after death, he might just as well pay here" and after having more beer and some straight whiskey, to which he was unaccustomed, he took a street car into Los Angeles where he was apprehended almost at once in a bar. He states that he had stopped then before reporting to the police because he wanted to call his daughter, his son-in-law, Mr. Van de Kamp, and his attorney.

Subject states that subsequent to his arrest the police officers concerned with his case were all very kind to him, that he had not been mistreated and had been given every consideration.

[fol. 1062] Physical Examination:

Subject is an extremely short but well-developed Austrian male of sixty-five apparent years. When stripped, there are no evidences of bruises, contusions or lacerations over the entire body, nor is there any limitation of movement or function of any of the four appendages. There is an old, healed linear scar running diagonally downward over a four-inch length from the hair line to the inner canthus of the right eyebrow. This was incurred in a street car accident several years ago. Blood pressure is 176/100; pulse 72 and regular. There are no heart murmurs, no evidence of congestive failure and the liver, spleen and kidneys are non-palpable. The pupils are moderately constricted but react to light and accommodation; eye grounds are normal.

Reflexes are physiological.

Romberg and Babinsky are negative. The general configuration is of the potential endocrine homosexual type, with hairless chest, prominent breasts, rounded abdomen, rounded and inturning thighs, triangular pubic hair distribution and a prominent pre-pubic fat pad. Testes are of normal size and soft; the penis is normally developed. Temporal vessels are tortuous.


Mental Status:

Subject is at ease, relaxed, quite casual in conversation, responds readily and almost eagerly to questioning, is most frank and open in discussion, is well-oriented in all fields [fol. 1063] and is rational and logical in all matters. He has a stable and excellent work record up until the time of his discharge in 1946, apparently had a satisfactory marital relationship until his wife's commitment in 1943. He attempted evasion on only one subject, his citizenship, which seemed to embarrass him more than his present involvement. He readily admits and without reluctance, an intense, compelling urgency to manipulate the clitoris and vagina of young girls, ages six to ten years, on repeated occasions. He denies exposing his private parts to these children or of attempting to entice them to orally copulate him, although he admits to having attempted to orally copulate his present victim "a couple of times". There is, however, hearsay evidence to the fact that he has exposed himself to children and has had them orally copulate him.

He claims that this urge developed about three or four years ago, although his secondary sex characteristics as above outlined under physical examination, suggest that this tendency was at least latent for many years prior to that time. There is little doubt, however, that his tendency has increased in recent years, due to arteriosclerosis including cerebral sclerosis, and that his inhibitions have probably been lowered due to this factor. His admitted sexual aggressions on several children over a period of years classify him as a sexual psychopath. However, his sexual psychopathy, was in no manner related to his murder of [fol. 1064] the present victim. This murder was committed as a result of panic and fear of detection and was purely incidental to his sexual intrusion upon the victim. The act of murder was not sexually inspired and should be considered only apart from his sexual aberrations and unrelated to them.

Subject had, in committing this murder, a complete insight into the nature and consequences of his alleged act and knew the difference between right and wrong in its relationship.

He was, therefore, at the time of his alleged act's commission, as well as at the time of examination, legally sane and responsible.

Very truly yours, 

(Signed) MARCUS CRAHAN, M.D.

[fol. 1065] The Court: Call this case of People versus Stroble. Fred Stroble, is that your true name?

The Defendant: Yes.

The Court: You were heretofore arraigned on information No. 130013, charging you with the crime of Murder. This is the time set for plea to the charge of Murder as set forth in this information. How do you now plead?

Motion to set aside information.

Mr. Hill: If your Honor please, at this time, on behalf of the defendant we move under the provisions of Section 995 of the Penal Code to set aside the information on the grounds that the defendant was not accorded a preliminary hearing and was not legally committed by the Magistrate, as contained in the provisions of Section 995.

The Court: I think your motion should state the grounds upon which the motion is predicated.

Mr. Hill: We do that on the ground that there was a departure from the mandate of the law requiring that the defendant be brought, after his arrest, before the Magistrate and informed of his Constitutional rights to defend in person and by counsel, to his right to be confronted by witnesses appearing against him, of the right of cross-examination, of the right assisted by counsel or in person to present—

The Court: In other words, you are claiming nothing [fol. 1066] was done which should have been?

Mr. Hill: I beg your Honor's pardon?

The Court: You are claiming nothing was done which should have been?

Mr. Hill: That is correct. In furtherance of that—

The Court: I think, in explanation of the Court's remark and Mr. Hill's response, there is no impropriety in making any motion upon all possible grounds—doesn't mean counsel isn't going to make a motion on each of the grounds assigned. You may proceed.

Mr. Hill: Before going into the merits or the lack of them, in furtherance of this motion, may I pray the indulgence of the Court on the ground of personal privilege and privilege in behalf of the office of the Public Defender, which both Mr. Al Matthews and I represent, to clarify in the public mind, if I may, the duties imposed upon counsel appointed to represent a person accused of a crime.

The Court: I think that that is a proper thing to do at this time, Mr. Hill, and I think there is good reason for it; and while it is not a part of the regular procedure the position of the Public Defender so frequently is misunderstood I think it should be clarified at this time. I welcome that comment.

Mr. Hill: That is the reason why I am making this request.

We are governed under a system of law and order with [fol. 1067] basic principles of government announced in the Constitution of the United States and various constitutions of the State of this Union; in furtherance of which there have been statutory pronouncements: a government of which we are proud, and of which the judicial branch is an integral and important part of the orderly conduct of life in the American Way, and according to American principles and precepts of justice.

This is based historically upon the abuses that grew up in continental Europe and spread to England—where it became the spirit of inquisition, and the spirit of the Lord Jeffreys of that time that “I would condemn thee and convict thee out of thine own mouth.” And as an effort to repudiate inquisitorial methods, the fundamental principles contained in our constitutions were written—not based upon a prejudgment or in the spirit of the vigilante of guilt, but that any and all persons who may be accused of a crime might be assured of protection under the law in the orderly, dispassionate, and impartial determination of guilt with reference to any charge. And, therefore, also embodied in furtherance of this spirit there have been announced in the canons of the profession of the law—which are not merely the guideposts, but a stern injunction upon every lawyer who is an officer of the court—that he must with fidelity carry out the precepts and principles therein announced. And this applies alike to those in the profes-

[fol. 1068] sion of the law who may be assigned to duties in furtherance of a prosecution, as well as those upon whose shoulders is imposed the duty and the obligation of representing the one accused. It is a solemn duty in any case. The nature of the offense involved is not the criterion. The guilt or the innocence of the person prejudged is not the criterion. But that the issues may be tried according to the rules of law laid down and based upon these precepts and principles of the manner in which orderly process in a court shall be the determining factor to ascertain, first, has a crime been committed; what was that crime; what was the degree of that crime, if degree be involved; and then whether or not the evidence establishes the guilt of the defendant of that crime, and the ultimate punishment that may be entailed.

In making this motion under 995 of the Penal Code, it is not with any intention of either stalling for time, nor frustrating justice, but merely that no angle or aspect of the case may have been neglected in the performance of these duties. Alike to the general public, the news of the fact that a defenseless, innocent little girl has been stricken, the victim of a murder, has shocked all of us alike. We must in this trial put aside the natural feelings of revulsion and horror in the attempt to carry out not merely the letter, but the spirit of our Constitutions, and that a fair and impartial [fol. 1069] trial may be accorded to the one who stands accused of that murder for this trial.

It is with that intent and purpose that Mr. Matthews and I, as representatives of the Public Defender's office, accept the responsibilities which have been delegated to us; and neither intemperate utterances, based upon a misconception of duties, nor any other influence, will deter us from carrying out and fulfilling our responsibility; to the end that at the conclusion of the case that confidence will be strengthened, faith will be restored in our whole judicial system; and in the manner of the trial, impassionately and with a view that due process has been given to the one accused of this crime, I hope that this may be a means of explanation to the public at large, and that a better understanding of the duties and responsibilities of counsel may be had.

Now, in furtherance of the motion, we base it upon the following facts—and I believe that Mr. Alexander and Mr. Henderson representing the People in this case will agree with what I am about to propose to prove, that we may stipulate in the interest of saving time, with reference to these facts as I shall announce them.

First, that a complaint charging Murder, naming the defendant in this case as the accused, was filed in the Municipal Court on Wednesday, November 16; that a warrant of arrest was thereby issued, by the Judge in the Municipal Court—I believe that was Judge Joseph Chambers, in whose court the complaint was filed, and who issued the warrant of arrest—The warrant of arrest was delivered to a peace officer. Then on Thursday, November 17, approximately about noon, the defendant was taken into custody and was taken to the office of the District Attorney at or about 1:00 o'clock of the afternoon of Thursday, November 17. That the District Attorney's office is located on the sixth floor of the Hall of Justice, corner of Temple and Broadway, in the city of Los Angeles; that the criminal divisions of the Municipal Court are located on the seventh floor of the Hall of Justice, and that there are a number of elevators and a staircase connecting the sixth floor and the seventh floor; that Magistrates presiding in the criminal divisions of the Municipal Court were then in and about their courtrooms—

The Court: Just a minute, Mr. Hill, let's get that straightened out. I understand that your statement is, that between 12:00 and 1:00 that there were Municipal Court Judges holding court and open to conduct arraignments?

Mr. Hill: No.

The Court: Well, I just want to get that clear for the record.

Mr. Hill: I meant during the court hours of that day.

The Court: I am not actually certain as to what their court hours are, but I am under the impression—and if I am wrong, I wish you would correct me—that the usual hours [fol. 1071] for the Municipal Court (I presume they are governed as Superior Court sessions are governed)—are that they hold sessions until noon, of course may occasionally run over, I mean regularly hold session until noon;

and recess until 2:00 o'clock; and resume at 2:00 o'clock?

Mr. Hill: I didn't mean to imply they were there between 12:00 and 2:00. This was a court day, and during regular and ordinary court hours the Judges were, one or more of them, available during the regular court hours of that day.

The Court: I am just wondering, Mr. Hill, whether that isn't going beyond the situation. After all, Judges do go out to lunch.

Mr. Hill: I said regular court hours, meaning until 12:00, and then being available from 2:00 o'clock.

The Court: In other words, you are not raising the point as to the period between 12:00 and 2:00?

Mr. Hill: I don't know how we can.

The Court: I just want to get it straight, that is all.

Mr. Hill: So far, gentlemen, we are in agreement?

Mr. Alexander: No, not entirely. According to the stipulation offered by you, you state the fact to be that the defendant was taken into custody around 12:00 noon, and taken into the District Attorney's office. That is not—taken into the D. A.'s office about 1:00 p. m.—that is not the fact. Before he arrived at our office, he was taken to [fol. 1072] the Wilshire Police Station on Picco, where the investigating officers were, and where the warrant of arrest was.

Mr. Hill: And that he was there booked?

Mr. Alexander: I don't know about that. From there he was taken—

The Court: I think we can assume that the regular course of procedure was, in the absence of anything to the contrary we will assume that there was a booking at the time.

Mr. Hill: We accept that addenda and correction, to make it clear; and with that, so far, are we in accord?

Mr. Alexander: We are.

Mr. Henderson: Certainly.

Mr. Hill: And we can thus far mutually stipulate that those are the facts?

Mr. Alexander: That is correct.

Mr. Hill: That during the afternoon of Thursday, November 17, he was interrogated in the office of the District Attorney; that at no time after he was taken into custody, and on the ensuing hours of Thursday, November 17, was

he taken into the Municipal Court. So far may we also—

Mr. Alexander: Stipulate that on the 17th of November, 1949, he was not taken into the Municipal Court.

Mr. Hill: That from the time of his arrival under custody—let me withdraw that.

[fol. 1073] From the time that he was taken into custody and brought to the District Attorney's office, arriving there approximately 1:00 o'clock, he was kept in the District Attorney's office continuously until approximately 5:00 o'clock that afternoon.

Mr. Alexander: We will not stipulate to that, that is not the facts.

Mr. Hill: Well, if you will, state it: I want to get it clarified.

Mr. Alexander: If I recall correctly, it was approximately 3:00 or thereabouts, but nowhere near 5:00.

Mr. Hill: I think we may stipulate continuously from the time he arrived in the District Attorney's office under custody, 1:00 o'clock, or approximately 1:00 o'clock, until he left under custody, he had no attorney in consultation.

Mr. Alexander: I will stipulate that during the time he was in the office of the District Attorney on November 17, 1949, no attorney representing this defendant was present in our office.

Mr. Hill: By that, you mean no attorney was in consultation with the defendant during that period of time?

Mr. Alexander: That is correct.

Mr. Hill: We will accept that stipulation.

The Court: Might I get one other point clear: when you made your original statement, Mr. Hill, you said the defendant was taken to the District Attorney's office about [fol. 1074] 1:00 p.m., and that was modified by the statement of Mr. Alexander that the defendant was first taken to the Wilshire Station. Was that 1:00 p.m.?

Mr. Alexander: The arrival at our office is approximately 1:00, your Honor.

The Court: All right.

Mr. Hill: That during the time that he was in the District Attorney's office he was confined in a room behind closed doors.

Mr. Alexander: He was in the office of Mr. William E.

Simpson, on the sixth floor of this building, the District Attorney, in the presence of many other people.

Mr. Hill: That the many other people alluded to by Mr. Alexander consisted of Mr. Simpson, the District Attorney, Mr. Ernest Roll, the Chief Deputy District Attorney, Mr. John Barnes, Assistant District Attorney, Fred Henderson, Adolph Alexander, and representatives of the Police Department, and investigators of the Bureau of Investigation of the District Attorney's office; and the total number of persons then present being nineteen.

Mr. Alexander: If you counted them and there were nineteen—we will say there were approximately 19 people, including at least three females, at all times.

Mr. Hill: No, that wasn't included in the count.

Mr. Alexander: Well, I am giving you that amendment, including at least three women at all times.

[fol. 1075] The Court: Do you want to add three ladies?

Mr. Alexander: Three ladies, yes, your Honor.

Mr. Hill: In order to make the record exactly correct, that there were present William E. Simpson, District Attorney, Fred Henderson, Ernest Roll, Everett Davis, John Barnes, Adolph Alexander, Harry Didion, Harry Elliott, W. H. Brennan, M. E. Tullock, Dave Brownson, Thad Brown, Arnold W. Carlson, Ralph Anderson, Jack Donahoe, Ray Pinker, Lee Jones, Leo Stanley, and George Banta, all males, and numbering nineteen. That in addition thereto, there were either three or four stenographers, ladies attached to the District Attorney's office.

Mr. Alexander: There were five.

Mr. Hill: All right, five of them, then. So far—

Mr. Alexander: So far—

Mr. Hill: —do you agree in the stipulation?

Mr. Alexander: So far we agree.

Mr. Hill: Thus far by agreement and by stipulation.

Now, as an added offer of proof: Relatives of the prisoner had requested an attorney to see the prisoner, and that such attorney, Mr. John Gray, made the request to see the prisoner in the offices of the District Attorney at about 3:00 p. m.; and that such request was refused and that the attorney was not allowed to see the prisoner until approximately 10:00 o'clock that night.

Mr. Alexander: We, of course, will not stipulate.
[fol. 1076] Mr. Hill: This is by way of offer of proof.

The Court: By way of offer of proof?

Mr. Hill: That during the period of time that the defendant was in the office of the District Attorney, before the persons present, which have been named into the record, that a statement in the form of questions and answers given was taken in the presence of this—these five stenographers working in shifts, and that they later reduced that statement to writing, and which statement consists of approximately sixty-two pages.

The Court: That is sixty-two pages of standard type-written double-spaced transcript?

Mr. Hill: I beg your pardon?

The Court: Is that sixty-two pages of standard double-spaced transcript?

Mr. Hill: It is single-spaced print.

Now, in furtherance of the offer of proof with relation to the appearance of an attorney—Is John Gray here?—we at this time offer into evidence an affidavit of John D. Gray as part of the records of this proceeding.

The Court: That will be marked Exhibit 1 for identification at this time.

Mr. Alexander: Is that being offered, your Honor, as part of this file?

Mr. Hill: Part of this file.

Mr. Alexander: To which we will object, if the Court [fol. 1077] please, as incompetent, irrelevant, and immaterial.

The Court: The affidavit, I understand, is offered in support of the motion?

Mr. Hill: Of the motion, yes.

Mr. Alexander: Oh.

The Court: I am merely marking it for identification; I haven't had a chance to read it; I don't want to take the time out right now, unless you want me to read it right now.

Mr. Hill: It is not necessary, if your Honor please.

Mr. Henderson: May I inquire, Mr. Hill, if Mr. Gray is in the court room?

Mr. Hill: I asked for him. He is not here. We had requested his presence, but he has not arrived.

Now, in further support of the motion, if your Honor please, by way of argument upon the motion, and in the interests of expedition of time, we ask to be filed as a part of the records of these proceedings, and to have read into the record of this proceedings, brief of points and authorities in support of the arguments contained in this brief.

The Court: I know of no reason for reading into the record the brief. You can file it and it can become a part of the record; so if occasion should ever arise to make it a part of a transcript it can be taken. I don't think there is any need of reading it into the record at the present time. [fol. 1078] Mr. Hill: We have furnished copy of the brief—

The Court: Mark the brief for the record as Exhibit 2 for identification.

Mr. Hill: —as well as a copy of the affidavit. We submit the motion at this time.

Mr. Alexander: Now, if the Court please, counsel having made the affidavit, or the substance of it, as part of his offer of proof, we naturally as yet have had no opportunity to cross examine the affiant; and if that is made a part of this record and that is part of counsel's offer of proof, if the Court please, we submit we want the opportunity to cross examine.

The Court: The Court will afford you that opportunity. I may say that I have for a long time realized that it is rather common practice in support of motions to submit affidavits. That works fairly well at times; however, it never does take the place of the actual testimony, it doesn't afford the opportunity of cross examination; and affidavits are more or less in artificial form and do not give as good a picture to the trier of fact as would the testimony of a witness. So the Court will give you the opportunity of examining Mr. Gray on the witness stand as to the facts and circumstances covered by the affidavit or anything else that may have any relationship to the situation.

Mr. Henderson: Your Honor, I have already suggested [fol. 1079] to one of the investigators that he attempt to serve a subpoena on Mr. Gray. Perhaps he can be present shortly.

Mr. Hill: May I state, if your Honor please, I know that Mr. Matthews talked with Mr. Gray over the telephone this morning and requested his presence up here; and that is why I assumed that he had arrived.

The Court: Well, apparently he hasn't chosen to appear in response to that request. It might be possible that he is out in the hall, although I don't know why a member of the Bar should be so afraid of coming into a court room.

The Bailiff: No one answers, your Honor.

Mr. Matthews: Your Honor, inadvertently Mr. Hill said I talked to Mr. Gray this morning. I talked to his secretary. I talked to him yesterday. I told his secretary Mr. Gray might be needed in court this morning and asked him to come in to court at 9:00 o'clock.

Mr. Hill: Your Honor please, through an inadvertence there is one other statement that I offer for consideration for stipulation in furtherance of this motion: That the defendant was taken into the Municipal Court on the following Friday, November 18th, approximately at the hour of 10:00; that he was then arraigned, and the City Public Defender was appointed to represent him; that denying the request of the representative of the City Public Defender's office, I believe it was Miss Kathryn McDonald, for further time, the Judge presiding in the Court, the Honorable Le-[fol. 1080] Roy Dawson, set the preliminary hearing for the ensuing Monday, November 21, 1949. We further contend, in furtherance—First of all, may we so stipulate?

Mr. Alexander: Just with this amendment, Mr. Hill, that this arraignment took place on November 18 at approximately 10:00 a.m. It was suggested by our office that the preliminary be set for Monday morning, the 21st; that the Public Defender suggested it go to Tuesday, which was the 22nd; Mr. Barnes then, of our office, then advised the Court that he had with him a copy of the statement taken from the defendant Stroble, which, if it would expedite matters, he would give to the Public Defender at that time, and that he would supply the Public Defender with any and all information that he had; that thereupon he gave the Public Defender a copy of that statement taken from the defendant Stroble; whereupon the Court said in view of those

circumstances he felt Monday, the 21st of November, was sufficient time.

Mr. Hill: We do not agree entirely with that. If we may add, that Miss Kathryn McDonald, as representative of the City Public Defender's office, not only suggested, but requested that the date for the preliminary hearing be set over to Tuesday, November 22nd, we will accept. If not, we will have to call upon Miss Kathryn McDonald.

The Court: Was that request supported by any proof or affidavits?

[fol. 1081] Mr. Alexander: None, your Honor.

Mr. Hill: No, we don't contend that.

Mr. Alexander: None, your Honor.

The Court: Was any grounds stated for the difference in the date?

Mr. Hill: Necessary for further time in which to properly—

The Court: In other words, wanted that additional day. Was any proof offered for the necessity of there being one more day?

Mr. Alexander: None whatsoever.

Mr. Hill: I believe there was some statement made by Miss McDonald at that time that it was possible that private counsel might come into the case.

Mr. Alexander: She did suggest that, that she wanted the extra day because it was possible that private counsel might come in.

Mr. Hill: I think we are in thorough agreement, if your Honor please, and if that is in the form of a stipulation I think both sides will mutually agree to it.

Mr. Alexander: Up to now you are correct; however, I wish to offer, though, the following in addition; That on Monday, November 21, 1949, the following took place in the court room of Judge LeRoy Dawson, which was Division 4 of the Municipal Court—and I am now reading from Page 1 of the record—"At this 10:18 o'clock a.m., this defendant [fol. 1082] was called for preliminary examination before Honorable LeRoy Dawson, Judge of the Municipal Court of Los Angeles City, sitting in Division 4 thereof; the defendant appeared in court in person, together with his counsel Mr. Henry O. Langford, Deputy City Public De-

fender; the People being represented by Messrs. Adolph Alexander and Fred Henderson, Deputies of the District Attorney of Los Angeles County, whereupon the following proceedings were had, to-wit:

"Frances Louise Lee, Official Reporter.

"The Court: People against Fred Stroble.

"Mr. Alexander: People are ready.

"Mr. Langeford: The defendant is ready."

And that no request for any continuance was made on Monday, November 21, 1949.

The Court: Now, I am just wondering, gentlemen, whether it would not facilitate the procedure somewhat if we treat the various points separately and dispose of them one at a time, instead of waiting until the entire proceedings have been concluded. I have this in mind—and I want counsel and persons in the court to understand that I have no knowledge of these matters, except as they are brought here—it seems to me that if in a proceedings of this sort we should encounter a ground for granting the motion, it is purely surplusage and waste of time to go into everything, if one such ground existed; we therefore might determine one issue—as they sometimes do in civil actions—[fol. 1083] determine one issue first.

Now, is there anything farther as to this matter of continuance of preliminary examination, or setting of preliminary examination?

Mr. Alexander: We haven't as yet, Mr. Hill as yet hasn't yet stipulated that the latter statement made by me, that which I read into the record—

Mr. Hill: Yes, we will stipulate.

The Court: Anything further as far as that is concerned?

Mr. Hill: No, your Honor.

The Court: The Court finds at this time there was no illegality in that proceeding, or in the setting of that preliminary examination for that time. In the first place, a motion for continuance—and that was virtually what Kathryn McDonald suggested—must be supported by proof, or affidavit for grounds. The mere assertion that something might be probable would not in any way affect the legality of setting for the 21st. If a ground existed on November 21st, either the old ground which previously existed, if

there were one, or if new ground had arisen, it was incumbent upon counsel at that time to make a motion for a continuance. Apparently that was not done. And, of course, the announcing that they were ready in the proceeding would waive any objection.

We will take up your next point.

Mr. Hill: We submit the matter now, your Honor, on the [fol. 1084] presentation of the brief in support of what we contend.

The Court: Well, the only point which has thus far been raised, I can see, is the dual point: first, that the defendant was not immediately arraigned; in other words, I may say this, apparently taking the hours of the Court as I assume them to be, we can assume there was a Municipal Court in session at 2:00 o'clock, and that the defendant was not arraigned during the afternoon of the day of his arrest, or until the following morning.

The other point is the proposition that the defendant was not allowed to see the attorney until after the District Attorney had obtained the statement from the defendant.

Mr. Alexander: Just a moment, I think the question was not that the defendant was not allowed to see an attorney, but that an attorney was not allowed to see the defendant. There is quite a difference there, your Honor.

The Court: Yes, there is very much difference. There is nothing in the record to indicate Mr. Stroble so desired or that Mr. Stroble desired Mr. Gray.

Mr. Alexander: That is exactly the point, your Honor.

Mr. Henderson: Your Honor, may I interrupt and say that I understand Mr. Gray is on his way to the court room and I think we would like the right to cross examine him before your Honor rules on the merits.

The Court: I haven't any objection to it. I could rule [fol. 1085] without his being here, but I think we might take his testimony.

Mr. Henderson: Thank you, your Honor.

The Court: May I, while we are waiting, take a look at that brief.

(Intermission.)

Mr. Hill: There is one further matter with reference to what occurred at the time of the arraignment of the defendant on the morning of Friday, November 18, it was at 11:00 o'clock, in place of 10:00, as appears by a transcription of the proceedings had at that time; and we offer that in evidence also to show what was said between the Court, Miss McDonald as counsel representing the City Public Defender's office.

The Court: Phonographic reporter's transcript of those proceedings?

Mr. Hill: Yes, your Honor.

The Court: Mark that.

Mr. Hill: And certified. And we will have to amend whatever stipulation we made in that regard to conform to what is contained in this.

The Court: Well, any stipulation that is made by counsel, of course, is subject to revision or withdrawal when it develops that it was inadvertently made.

Mr. Alexander: Do you contend, counsel, that your stipulation is not in accordance with the proceedings as set forth [fol. 1086] in this transcript?

Mr. Hill: Yes.

Mr. Alexander: In what respect?

Mr. Hill:

"The Court: —" on page 3, Line 4—"Do you think you could be ready by Tuesday morning?"

"Miss McDonald: Well—

"The Court: Mr. Stroble, is it your intention to acquire private counsel?"

"(Miss McDonald consults with the defendant.)

"Miss McDonald: At this point, your Honor, I believe he has no plans to have private counsel. Tuesday, I believe, would give us time.

"Mr. Barnes: We would like to have it, Monday, if we could. I have with me a copy of the statement for counsel, to speed examination into this matter."

The Court: I have read the transcript, Mr. Hill. It doesn't change my mind in the slightest, merely convinces me; furthermore, it is perfectly correct, all that counsel said—did not request a continuance, did not state any grounds,

and furthermore merely said she would appreciate a Tuesday setting because the Public Defender's office was very busy.

Mr. Hill: We merely offer it for the completion of the record.

The Court: We will mark it three in evidence, so far [fol. 1087] as this proceeding is concerned.

Mr. Alexander: Mr. Gray has arrived, your Honor.

The Court: But basically we get back to the final proposition, and that is if on Monday more time was needed it was incumbent upon defendant's counsel to request it; and, furthermore, may I add that it is not necessarily incumbent upon the Court to appoint counsel at the preliminary examination. That is not a right which a defendant has, but the Court did out of consideration for all the circumstances appoint counsel.

The Court: You may proceed.

Mr. Matthews: Mr. Gray, will you take the stand?

JOHN D. GRAY, having been first duly sworn as a witness, was examined and testified as follows:

The Clerk: Your name, sir?

The Witness: John D. Gray.

Direct examination

By Mr. Matthews:

Q. Mr. Gray, on the 17th day of November, 1949, were you attorney at law duly licensed to practice said profession before the highest Court and all other Courts of the State of California?

A. I was.

Q. Do you know Mr. Alexander?

[fol. 1088] A. Yes, I do.

Q. Do you know Mr. Henderson?

A. I do.

Q. When did you have occasion to meet those gentlemen?

A. I first met Mr. Alexander and Mr. Henderson the night before at the Wilshire Police Station—

Q. Is that November 16, 1949?

A. That would have been November 16, yes.

Q. Were you introduced to them?

A. Yes, I was introduced. We went upstairs into the detectives' room at the Wilshire Police Station. I went with Mr. Hausman and Mr. Hausman's son Freddy Hausman; and at that time I was introduced to Mr. Alexander and to Mr. Henderson.

Q. Do you know whether or not an Inspector Donahoe was present at the time that you met Mr. Henderson and Mr. Alexander?

A. Yes, Inspector Donahoe was present at that time.

Q. Do you know whether in your presence it was stated to Mr. Henderson and Mr. Alexander that you represented Mr. Fred Stroble on a pending misdemeanor charge involving a sexual offense?

A. At the time I was introduced—I don't recall who it was that introduced me, I believe it was Inspector Donahoe who introduced Mr. Hausman and myself to Mr. Henderson and Mr. Alexander—it was stated, "This is Mr. Gray, Mr. [fol. 1089] Hausman's attorney, and he also represented Stroble on the previous misdemeanor charge."

Q. On November 17, 1949, were you apprised of the fact that Fred Stroble had been arrested?

A. Yes, I was.

Q. About what time?

A. Well, it was about 20 or 25 minutes before I arrived at the District Attorney's office.

Q. What time did you arrive at the District Attorney's office?

A. I arrived there at approximately 2:43.

Q. From whom did you learn of the arrest of Fred Stroble?

A. Mr. Hausman.

Q. Did he direct you to do anything?

A. He requested me to go up there to see Stroble.

Q. Did you go to the District Attorney's office?

A. I did so, as soon as I could.

Q. Did you see any one there upon your arrival?

A. The girl at the desk.

Q. Did you say anything to her?

A. I requested to see Mr. Alexander.

Q. What was the result of that request?

A. She phoned in and there was a brief interval of time, and she told me that I couldn't see Mr. Alexander, that he was in conference and couldn't be interrupted.

[fol. 1090] Q. Did you then request to see some one else?

A. I asked to see Mr. Henderson, and she again appeared to phone in and told me that Mr. Henderson was in conference and I couldn't see him.

Q. Did you then request to see some one else?

A. I requested to see Mr. Simpson, and she again phoned in and told me that Mr. Simpson was in conference and couldn't be disturbed. I then—then I told her that I demanded the right to see Mr. Stroble.

Q. Incidentally, when you went into that office, did you in any way introduce yourself to this girl?

A. When I went into the office, I told her my name was John D. Gray, and I am an attorney and I have come here to see Mr. Stroble.

Q. Getting back to see—you demanded the right to see Mr. Fred Stroble?

A. Yes, I demanded the right to see him.

Q. And what happened to that demand, what response did the girl make to your demand, when you demanded the right to see Fred Stroble what did she say to you, if anything?

A. As I recall, she told me that she had informed the gentlemen that I had asked for and told them that I was there; and I don't think she said anything, I think she just held up her hands.

Q. Now, this series of phone calls by the girl receptionist in the District Attorney's outer office, how long a time did [fol. 1091] it consume?

A. Oh, I think that she had completed the first call in a matter of two or three minutes.

Q. Now, approximately five minutes after you entered the District Attorney's office, did you have occasion to talk to some other person other than the girl?

A. Well, I saw Inspector Donahoe in the corridor and I motioned to him to come out, and talk to me.

Q. Did you say anything to him, and did he say anything to you?

A. No. He came out and spoke to me and I asked him—I told him that I wanted to see Stroble, and I asked him how long it would be before I could either see Stroble, or some member of the District Attorney's office that I could talk to about it.

The Court: Might we identify who Inspector Donahoe is, for the record?

Mr. Matthews: Excuse me, your Honor?

The Court: Might we identify who Inspector Donahoe is, for the record?

The Witness: He is Inspector Jack Donahoe of the Wilshire Station, I believe.

Mr. Matthews: Los Angeles Police Department?

The Witness: Yes.

Q. By Mr. Matthews: City of Los Angeles, in charge of homicide?

[fol. 1092] A. I didn't know that.

Q. You didn't know that fact? Now, when you told them that you wanted to see Fred Stroble, what did he say to you, if anything?

A. When I told—when I first talked to him he said, "Let's do this thing right." He said, "You go on home and come back tomorrow." And I told Inspector Donahoe that I intended to remain until I saw Stroble; and I asked him how long he thought it would be before I could see either Stroble or Mr. Alexander and he said, "Well," he said, "well, you might be able to see Stroble or Alexander in about a half an hour." He said, "I can't promise you that, but it may be around a half an hour that you might be able to see one of them."

Q. Was that the end of that conversation?

A. That is in substance what he said to me.

Q. I think you said that you arrived at the District Attorney's office at 2:43 p.m.

A. Yes.

Q. The afternoon of November 18, 1949?

A. Might have been 2:42, but it was either 2:42 or 2:43.

Q. After your conversation with Inspector Donahoe, did

you have any further conversation with the girl at the desk in the District Attorney's office?

A. Well, during the period of time I was there in the [fol. 1093] entry hall, there of the reception room, I requested her, I would say, five or six times, to call in; and I asked her on numerous occasions, "Are you sure they know I am here?" And she stated, "Yes, they know you are here, Mr. Gray."

Q. Well—

A. Incidentally, there were two girls on the desk after—about fifteen minutes after I got there. The girl that I talked to was a blond girl.

Q. Did you repeat that question as many as five and six times?

A. Yes, I did.

Q. Now, thereafter, when did you first see Fred Stroble?

A. When I first saw him is when they led him out past me, there was, I guess there must have been 40 or 50 people that came out of the door after him, and they led him out and took him out to the elevators.

Q. That is the same afternoon? About what time?

A. Well, I would say that that was approximately 4:20.

Q. Were you informed by any one, or did you have occasion to find out where Mr. Stroble was being taken?

A. Well, one of the reporters said, "Come on, they are taking him out to 348 South Hobart to see Dr. Crahan?"

Q. Thereafter did you again see Mr. Adolph Alexander of the District Attorney's office?

A. At the time that Stroble was taken out to the Elevators, I saw Mr. Alexander shortly after that time inside [fol. 1094] the corridor; and I went over and spoke to him at the door.

Q. Do you remember the conversation you had with him?

A. I asked him why I had not been allowed to see Mr. Stroble.

Q. What did he tell you?

A. He said that we were busy and in conference, and it couldn't be interrupted, it was just a normal procedure.

Q. Did you thereafter talk to any other member of the District Attorney's office?

A. Mr. Alexander took me back in the corridor, back to

Mr. Barnes's office. I met Mr. Barnes, I believe, at the door at the same place we went back.

Q. Did you talk with Mr. Barnes?

A. Yes, I talked to Mr. Barnes.

Q. What was your conversation, if any, with him?

A. I asked Mr. Barnes why I had not been allowed to see Mr. Stroble.

Q. What did he tell you?

A. He told me that they were in conference and couldn't be interrupted; and I told him that I had the right to see Mr. Stroble; and he told me that I didn't have any such right.

Q. Did he tell you where Mr. Stroble had been taken?

A. He told me that he had been taken out to see the doctor, or an alienist, I don't know the exact terms that he [fol. 1095] used; but he said he would be out there for an hour and a half or two hours, and would have to be booked before I could see him.

Q. Did you thereafter wait to see Mr. Stroble?

A. I did.

Q. When was the next time that you saw him?

A. I saw Mr. Stroble about 9:30 that evening.

Q. Where?

A. In the attorneys' room of the county jail.

Mr. Matthews: You may cross examine.

Cross examination

By Mr. Alexander:

Q. Mr. Gray, I take it that you read this affidavit that has been filed with the Court?

A. I did.

Q. Directing your attention to Page 2 of the affidavit, the first paragraph, and I will ask you whether this is correct: "That at approximately 2:20 p.m., November 17, 1949, affiant—" that is you—"learned about the arrest of Fred Stroble through Mr. Ruben D. Hausman, said Stroble's son-in-law, who directed him to represent the defendant in the above-entitled action." Is that correct, Mr. Gray?

A. Mr. Hausman told me to go up to the District Attorney's office and see what I could do.

Q. Now, Mr. Gray, you were not directed to represent [fol. 1096] this defendant, were you?

A. Well, I couldn't represent the defendant without his consent.

Q. Now, Mr. Gray, you remember on the night of November 16, 1949, Fred Henderson, Inspector Donahoe, and I spoke to you, both at the Wilshire Station—

A. Yes, sir.

Q. —and at the home of Sylvia Hausman?

A. Yes, sir.

Q. And do you remember in that conversation we spoke to you about your association with the family and you told us that you were a friend of Ruben Hausman?

A. That is correct.

Q. And did you not tell us that you represented this defendant on that misdemeanor charge because Ruben Hausman wanted you to?

A. That is correct.

Q. And did we not ask you, or at least one of us not ask you whether you would represent the defendant Stroble in this murder charge? In substance?

A. That I don't recall, Mr. Alexander.

Q. Would you say we did not talk to you about representing him on this murder charge?

A. No, I wouldn't say that. I don't recall any conversation concerning my representing him.

Q. And is it not a fact, Mr. Gray, that you told Fred [fol. 1097] Henderson, Inspector Donahoe and me that you represented him in the misdemeanor charge because of your friendship with Hausman; that you would not represent him on this murder charge?

A. To what time do you refer, Mr. Alexander?

Q. Wednesday night.

A. I don't remember the exact conversation, but the first part of the question where you asked me if I—why I represented him on the misdemeanor charge is because I was a friend of Mr. Hausman's, that is correct. I don't remember making that statement.

Q. Either in substance or effect?

A. It might have been made, yes.

Q. By you, is that right?

A. Yes.

The Court: Well, Mr. Gray, when you went up to the District Attorney's office, was it with the intention of representing Mr. Stroble in the murder charge, or merely to get information?

A. At the time I went to the District Attorney's office, your Honor—

The Court: Or was it something even more hazy than that?

A. No, at the time I went to the District Attorney's office, I intended to advise Mr. Stroble of his constitutional rights, and in the event that Mr. Hausman authorized me [fol. 1098] to do so I would have associated some attorney experienced in handling criminal matters to handle the case from that time on.

The Court: You may proceed.

Q. By Mr. Alexander: Now, Mr. Gray, that night Officer Brennan, Sergeants Brennan and Tullock were with us, too, isn't that right, that is Wednesday night?

A. That I don't recall. I believe Sergeant Brennan was there. I don't remember about Sergeant Tullock.

Q. Do you remember talking to Sergeants Brennan and Tullock Wednesday night in front of Sylvia Hausman's home?

A. Yes, I recall they were there at the house.

Q. And wasn't there some conversation about whether or not you would represent Stroble in the murder charge?

A. Mr. Alexander, there has been so much conversation about that, I don't recall at this particular time whether there was or there wasn't.

Q. And could it have been that you told Sergeants Brennan and Tullock that night, too, that you would not represent him on this murder charge?

A. It could have been, yes.

Q. All right. Now, the following day when you came up to the District Attorney's office, the first man you spoke to, I believe, of those you mentioned from the stand, was Inspector Donahoe, is that correct?

A. Yes, that is right.

Q. Mr. Gray, isn't it a fact you told Inspector Donahoe [fol. 1099] on the sixth floor of this building, on November

17, that you just wanted to hear from his lips whether or not he did it, so that you could report back to the Hausmans?

A. That is correct, yes.

Q. And that was your purpose in coming there, isn't that right?

A. No, that is not true, Mr. Alexander.

Q. Did you tell Donahoe that was your purpose in coming there?

A. I told Inspector Donahoe that Mr. Hausman had requested me to come there.

Q. To find out whether or not he had done that, is that right?

A. You mean, was that Mr. Hausman's request to me, to find out whether he had done it or not?

Q. Yes.

A. No.

Q. Well, did you tell Donahoe that you were there to hear from this defendant's own lips whether or not he was guilty?

A. Yes, I said that, I would report back to the family after I talked to him.

Q. And you were not at our office at that time for the purpose of representing this defendant, isn't that right?

A. No, that isn't correct.

Q. Do you represent this defendant now?

[fol. 1100] A. Yes, I do.

Mr. Matthews: Just a minute—

Mr. Alexander: On this murder charge?

The Witness: No, I don't, not on the murder charge.

The Court: The record has already established that question.

By Mr. Alexander:

Q. Have you ever represented this defendant on this murder charge?

A. I have never been employed by Mr. Ströble to represent him on this murder charge, no.

Q. Or by any one else to represent him on this murder charge?

A. No.

Q. After you spoke to Jack Donahoe you spoke to me, is that right, some time later?

A. That was after Mr. Stroble had been taken out of the office over to the elevator, yes.

Q. Do you remember whether or not you said to me, "I just want to hear from his own lips whether he is guilty or not, so I could tell the Hausmans," did you tell that to me?

A. I might have told that to you; yes, I believe I did, as a matter of fact.

Q. And when you told that to me, Ernie Roll of our office was right there, isn't that right?

A. Yes, I believe that Mr. Roll was there.

[fol. 1101] Q. And Ernie Roll and I took you back to Johnnie Barnes, isn't that right?

A. I thought I met Mr. Barnes at the door; it may have been back in the office.

Q. And then you had a conversation with Johnnie Barnes?

A. Yes, I did.

Q. And did you tell Johnnie Barnes that you do not represent him on the murder charge, you just wanted to talk to him for the sake of your clients, the Hausmans, in substance?

A. I don't recall, Mr. Alexander, that particular statement. I may have told him that. I would have a good reason for telling him that. Never having tried a murder case, I wouldn't feel myself equipped to represent him, I would have to associate some one.

Q. That was the truth, you wanted to talk to Stroble so that you could go back and tell the Hausmans whether or not he admitted that he did it?

A. The purpose of my coming up to see Mr. Stroble was to see that he had representation until such time as Mr. Hausman no longer cared to take care of that for him.

Q. Mr. Gray, I will ask you whether or not, in substance and effect, you said to Johnnie Barnes, after I introduced you to him, and in the presence of Ernie Roll, as follows: "I simply want to find out whether or not Stroble did it; I want to let Hausman know, because if he [fol. 1102] did it Hausman will have nothing further to do with him"—in substance and effect isn't that—

A. Yes, I think that is true, I think I said that to him.

Q. Your instructions were that if he admitted doing that that Hausman would have nothing further to do with him?

A. My instructions were that I wouldn't have the authority to employ any one to defend him if he were guilty of the crime—if I felt that he were guilty of the crime.

Q. And that if he were guilty Hausman would not employ you to defend him?

A. That is correct.

Q. And you wanted to hear that from this defendant's own lips, is that right?

A. Well, I wanted to hear a lot more from this defendant's own lips. That was part of it.

Q. And that was the purpose of your coming to that office, isn't that right?

A. Well, the purpose of my coming to that office, Mr. Alexander, was to talk to Mr. Stroble.

Mr. Alexander: Nothing further.

Redirect examination

By Mr. Matthews:

Q. And if you had been given opportunity to talk to Mr. Stroble, what would you have told him, Mr. Gray?

Mr. Alexander: Just a moment—that is incompetent, [fol. 1103] irrelevant, and immaterial.

The Court: Objection sustained—purely hypothetical. The basic question is as to whether the circumstance as it occurred at the time in any way shows any irregularity in not allowing Mr. Gray to talk to Mr. Stroble at that particular time.

Mr. Matthews: That is all.

Mr. Alexander: I have nothing further from this witness.

The Court: That is all, Mr. Gray.

(Pause.)

Mr. Matthews: Mr. Gray, will you take the stand again, please?

JOHN D. GRAY resumed the stand for further

Redirect examination

By Mr. Matthews:

Q. Some time during your visit to the office of the District Attorney on the afternoon of November 17, 1949, did you have occasion to make notes in regard to the things that happened to you there?

A. Yes, I did.

Q. And where did you make those notes?

A. I made those notes after I talked to Mr. Barnes in the back room of the District Attorney's office, when Mr. Barnes had let me go in to call Mr. Hausman.

[fol. 1104] Q. And have you—I'll show you a piece of paper and ask you whether the handwriting on that paper is yours?

A. Yes, this is my handwriting.

Q. And are those the notes that you made the afternoon of November 17, 1949, in the District Attorney's office?

A. They were made that Thursday afternoon.

Mr. Matthews: Your Honor, may we offer this in evidence?

Mr. Alexander: To which we will object as incompetent, irrelevant, and immaterial.

The Court: Objection sustained. The memorandum itself is not admissible in evidence. It might be offered in evidence if the District Attorney desired, if the District Attorney thought there was any occasion for it.

Mr. Matthews: That is all.

Recross examination.

By Mr. Alexander:

Q. Mr. Gray, did I hear you say you were sitting in Mr. Barnes's private office telephoning, is that right?

A. Pardon?

Q. You were in Mr. Barnes's private office?

A. I don't know whether it is Mr. Barnes's office. He took me in where I could make a phone call.

Q. Is that where you spoke to Mr. Barnes?

A. No, I spoke to Mr. Barnes outside. Mr. Barnes left the office while I made the call.

Mr. Alexander: That is all. Thank you.

[fol. 1105] Mr. Matthews: That is all.

The Court: I think I should call the trial calendar, to see what our situation is here; I have sort of lost track of it.

(Intermission.)

The Court: Proceed on the motion. Anything further on the motion, gentlemen?

Mr. Matthews: Submit it, if your Honor please.

Mr. Alexander: We will submit it, if the Court please.

Motion Denied

The Court: The motion will be denied. You may proceed with the arraignment.

Arraignment

Mr. Alexander: Fred Stroble, to this charge of Murder, as set forth in Information 130,013, how do you now plead, guilty or not guilty?

The Defendant: I plead not guilty.

Mr. Matthews: Your Honor, at this time defendant wishes to request the Court to grant a reasonable period of time, a week or two, to see whether a further plea of not guilty by reason of insanity should be entered.

The Court: Well, we only have one plea entered at the present time. We can set the case for trial. If a showing is made later on that there should be such a plea interposed that can be done. However, in view of the fact that the matter has been pending for a whole week and nothing has been found, apparently at the present time to indicate the basis for such a plea, the Court being aware of the fact [fol. 1106] that the Public Defender frequently enters that plea merely on sort of a hunch, I don't see any reason for any further continuance before we set the case for trial.

Mr. Matthews: Your Honor, we at this time enter a plea of not guilty by reason of insanity of the defendant Fred Stroble.

The Court: With reference to that particular matter, the Court will appoint as experts Dr. Robert E. Wyers, the superintendent of the Norwalk State Hospital; and Dr. Edwin E. McNeil, and Dr. Victor Parkin.

May I have the calendar, Mr. Clerk?

The Clerk: 1950?

The Court: Yes, I doubt whether we can get—this calendar is so badly congested, I doubt whether we can secure a date this month.

Mr. Alexander: If at all possible, your Honor, we would appreciate an early date in January, as early as possible in January.

Mr. Hill: Your Honor, the 16th of January, or the 23rd would be desirable on the part of the Public Defender.

The Court: There happens to be a little statute, Mr. Matthews, which provides that the Court shall, if possible, set the case within a 30-day period.

Mr. Hill: Your Honor means 60 days?

The Court: I will have to read it (examining Code).

Section 1050, first sentence; (Reading)

[fol. 1107] "The Court shall set all criminal cases for trial for a date not later than thirty days after the date of the entry of the plea of the defendant."

I thought my memory was correct on that. However, the 30-day period would land us on a Holiday.

Mr. Hill: May that not be waived at the request—

The Court: I suggest you read the balance of 1050. You don't seem to be quite familiar with it.

Mr. Hill: All right—I haven't read it for a long time as amended.

The Court: Well, it hasn't been amended.

Mr. Matthews: Well, your Honor, there was some mention in our brief about galloping justice. We were hoping in this Court.

The Court: If you want me to make a comment on that, I will, but it won't be a comment in favor of the Public Defender. There is nothing to indicate galloping justice here at all. This case has been handled perfectly regularly up to the present time; in fact the defendant was allowed

a full week in which to enter a plea. We are not galloping through here at all. This case is going to be handled just the same as any other murder case will be handled.

Set for January 3, at 9:00 a.m.

We will take a short recess.

(Recess.)

[fol. 1108] Voir dire examination of August Kalbfuss:

By the Court:

Q. Mr. Kalbfuss, are you opposed to the death penalty?

Mr. Kalbfuss: Pardon?

The Court: Are you opposed to the death penalty?

Mr. Kalbfuss: No.

The Court: You have heard some of these other jurors now sitting in the jury box state, in effect, they consider there were two kinds of cases, those in which life imprisonment would be a proper penalty in a first degree murder case; and in other cases could and would vote for a death penalty.

Mr. Kalbfuss: Yes.

The Court: Have you heard or read about the case any?

Mr. Kalbfuss: I have.

The Court: Have you formed any opinion, anything like a fixed opinion at the present time?

Mr. Kalbfuss: None at all.

The Court: In other words, if you were accepted on this jury you would start out, we will say, from scratch, absolutely impartial?

Mr. Kalbfuss: That is right.

The Court: You are willing to listen to the evidence on both sides, and to decide the case according to the evidence [fol. 1109] as you hear it in the court room and the law of California?

Mr. Kalbfuss: That is right.

The Court: Counsel may inquire.

Examination

By Mr. Matthews:

Q. Mr. Kalbfuss, how do you spell your name?

A. K-a-l-b-f-u-s-s.

Q. Now, Mr. Kalbfuss, sitting back there with the rest of the jurors before you in the box, you have heard a lot of questions asked both by the District Attorney and by the Public Defender. Perhaps you felt that some of them were foolish, some of them were outlandish; yet you realize, do you not, that we have to go into every aspect of this case in order to give the defendant a fair trial. Do you think that—would you consider it reasonable if psychiatrists took the stand and said there was such a thing as a change of life for men as well as for women?

A. Yes.

Q. That would sound reasonable to you, would it not?

A. It would.

Q. As a result of that change of life, these psychiatrists so testified, certain changes are brought about in the body that affect the brain, the clarity of your thinking, whether the mind is confused or not; and if that was so testified to, would you take that into consideration and weigh and consider it?

[fol. 1110] A. Yes, I would.

Q. Now, if you came to the point in this case where you felt Mr. Stroble might be guilty of second degree—he might be guilty of first degree—I can think of reasons why he is just guilty of second degree—I can think of reasons why he may be guilty of first degree... you have got that in your mind, you are upstairs now, you have heard the whole case, all the evidence is before you, you are pondering that thing and it balances out.... but you have still got a doubt in your mind whether it is first degree or second degree. How would you resolve that doubt, in favor of the defendant or against him?

The Court: Well, just a moment, Mr. Matthews, I presume that you mean a reasonable doubt?

Mr. Matthews: Oh, yes, I mean a reasonable doubt.

Q. You have got a reasonable doubt about it?

The Court: I think the juror should be informed also before he answers that question that if you sit in a murder case, you are satisfied that a murder has been committed, but you have a reasonable doubt as to whether it is first or second degree murder; then it would be your duty as a juror to fix it as second degree murder.

If I told you that was the law, would you follow it?

Mr. Kalbfuss: That is right.

By Mr. Matthews:

Q. And if you thought it was first degree murder, but there was a doubt in your mind as to whether this man [fol. 1111] should be given life imprisonment or the death penalty, there was a reasonable doubt as the Court says, would you again resolve that in favor of the defendant and give him life imprisonment?

A. No.

Q. You would give him death, is that right?

A. That is right.

Q. If it was first degree, you just would jump over life imprisonment and give him death, is that right?

A. That is right.

Mr. Matthews: Thank you. Your Honor, we now challenge Mr. Kalbfuss.

The Court: I think the difficulty, Mr. Matthews, is that you are propounding questions to the jurors, when the juror may not know what the law is. I think in fairness to the juror we should explain the situation to him.

Mr. Kalbfuss, our law is this: That in first degree murder cases—now, we will take a case in which, we will say, for example you are on a jury and you have heard the evidence, you have come to the conclusion that the person on trial is guilty of first degree murder, that part of your verdict you have agreed on; the next question is, you have to fix the penalty. Now the penalty may be death penalty, or it may be life imprisonment. The death penalty for the bad, aggravated cases, those which are very vicious: life imprisonment for those that have a mitigating circumstance, [fol. 1112] that are not so bad. Now, if you were in that position, would you always vote for the death penalty, or

would you decide which, in your conscientious judgment, you thought was a right thing?

A. No, I wouldn't believe in sentencing the man to death. I was confused a moment ago in the questioning.

The Court: I thought you were.

By Mr. Matthews:

Q. I am sorry, Mr. Kalbfuss.

The Court: In other words, might be life imprisonment, might be death, depending on how bad you thought the case was?

A. That is right.

The Court: Challenge denied.

Mr. Matthews: I'm sorry I confused you, sir.

Q. What is your business or occupation?

A. Mechanic.

Q. Do you belong to a Union?

A. No.

Mr. Matthews: Pass the juror.

Examination

By Mr. Alexander:

Q. Mr. Kalbfuss, do you have any children of your own?

A. Two.

Q. I take it you know nobody connected with this case? You know nobody who is connected with this case?

A. No.

[fol. 11f3] Q. Do you know either Mr. or Mrs. Hausman?

A. No.

Q. Were you here when Mr. Henderson read the names of the witnesses yesterday?

A. Yes.

Q. Did you hear those names called?

A. Yes, I did.

Q. Did any of those names sound familiar to you?

A. No.

Q. Now, Mr. Kalbfuss, as you sit there now, you know of no reasons why you can't be as fair with the People as you can with the defendant, is that right?

A. That is right.

Q. You have made no special study of psychology or psychiatry, have you?

A. No.

Q. And you would be satisfied to listen to the testimony of the witnesses as they appear in this court?

A. I would.

Q. And you will weigh their credibility in the manner that his Honor instructs you to weigh their credibility?

A. Yes.

Q. In other words, he will define when a witness can be believed or disbelieved, that is generally, and you will follow those instructions, is that right?

A. That is right.

[fol. 1114] Q. Mr. Kalbfuss, if we prove that this is a case of murder in the first degree, and it is a proper case for the death penalty—and I think you know now the People are demanding the death penalty in this case—would you have the courage to return a verdict that would bring the death penalty?

A. Yes.

Q. And would this defendant's age alone stop you from bringing in such a verdict?

A. No.

Q. And in determining the guilt or innocence of this defendant, you will hear the evidence and use your own good common sense, will you not?

A. Yes, sir.

Mr. Alexander: Pass for cause.

The Court: We have arrived at our normal recess period. Before we proceed further, we will take our morning recess. Keep in mind, ladies and gentlemen of the jury, during all times it is the duty of jurors, and it is only in the interest of fairness to everybody concerned; that you do not talk about the case or form or express any opinion. We will take a short recess.

(Recess.)

(After recess:)

The Court: In the case on trial, the record will show the defendant, counsel, and the jurors returned to the box

[fols. 1115-10] are the same jurors who were in the box before we took our recess.

The Court: The matter is now up for peremptory challenge by the defendant.

Mr. Matthews: Pardon, if your Honor please?

The Court: Defendant's peremptory.

Mr. Hill: Excuse Mr. Detra.

(Whereupon said prospective juror was excused, and the Clerk drew another name and read it as follows:)

The Clerk: Mrs. Mamie O. Frazier.

(Mrs. Frazier was examined and passed.)

Mr. Hill: Defendant accepts the jury as now constituted.

The Court: Are there any further peremptories by the People?

Mr. Alexander: The People pass. The jury is satisfactory.

The Court: The Clerk may swear the twelve jurors now in the box.

(Whereupon the jury was duly sworn by the Clerk to try the case.)

[fols. 1115-1139] Mr. Matthews: I don't know, ladies and gentlemen, as I told you on voir dire, what more a human being can do than come forward and say I did this terrible thing, and here is how I did it. I don't know why I did it. I can't believe I did it, but here it is. Do you give this man no credit for his confession? Where there is no duress used by the State, don't you give him any credit? Isn't that an indication of something by way of rehabilitation? What more could you do, if you committed a terrible crime, than Fred Stroble did, in attempting to expiate it?

Substitution of Counsel

The Court: People vs. Stroble.

Mr. Cuff: At this time, your Honor, information having come to us that Mr. Stroble is praying for private counsel,

and Mr. John D. Gray having contacted us, we now move the Public Defender be relieved of further responsibility in this case, and that Mr. John D. Gray be appointed in our place and stead.

Mr. Gray: Yes, if your Honor please, I move that I be appointed as counsel for Fred Stroble in place of the Deputy Public Defenders Hill and Matthews.

The Court: I think the record should be supplemented before we take any action on that by showing that on January 23 there was filed with this court a substitution of Mr. Gray in place of the Public Defender, signed by the defendant, and an acceptance of that substitution by Mr. Gray. The substitution will be confirmed.

With reference to the Daily Transcript—

Mr. Cuff: I would like to make a remark on that. The record will show, I believe, that we have handed Mr. Gray the transcript that was in our possession.

Mr. Gray: Yes, your Honor.

The Court: Can you have the record show when that was?

Mr. Cuff: That was the day following, I believe, that the written motion—

[fol. 1140] The Court: That would be the 23 of January.

Mr. Cuff: That is right, Mr. Gray?

Mr. Gray: No, your Honor. That transcript was handed to me by Mr. Matthews—it was in the possession of Mr. Matthews—it was handed to me on Monday night, which was the day of the motion.

Mr. Cuff: Yes, I called Mr. Matthews and asked him to turn it over to Mr. Gray. It was not in my office. I thought it was the day before.

Mr. Gray: In accordance with your Honor's suggestion, I obtained the transcript as soon as possible.

The Court: Yes.

Fred Stroble, you were heretofore arraigned on information 130013 charging you with the crime of murder. On December 2, 1949, motion was made under Section 995 of the Penal Code and denied; and thereafter you entered two pleas, a plea of not guilty and a plea of not guilty by reason of insanity. In accordance with the statute, three psychiatrists were appointed at that time. The case was set for trial on January 3. Issues of fact were submitted

to a jury by a trial beginning on January 3 of this year. The jury returned a verdict finding you guilty of murder, and fixing the murder as murder of the first degree without recommendation as to the penalty. Thereafter, prior to proceeding upon the trial of the issues raised by the plea of not guilty by reason of insanity, the defendant in person [fol. 1141] and each of the counsel for the respective parties, defense and prosecution, waived trial by jury; the matter was submitted to the Court, and the Court found you sane. You, therefore, stand convicted of murder in the first degree. Is there any legal cause why sentence should not be pronounced?

Mr. Gray: There is, your Honor. If your Honor please, has your Honor ordered the substitution of me as attorney for Mr. Stroble?

The Court: Yes.

Mr. Gray: If your Honor please, at this time I should like to move for a continuance on the ground that I have not had sufficient opportunity to read this transcript. I have received the transcript from Mr. Matthews, which consists of 992 pages. I have been unable to read the entire transcript which I have because I have been engaged in trial—I was engaged in trial all day Wednesday of this week, and I was engaged in trial all day yesterday. The record that I have is incomplete. I do not have any transcript, any daily transcript of proceedings after Monday, January 16. I therefore am unable at this time to properly present a motion in defense of this defendant, because all of the facts are not available.

The Court: I don't think there was any proceeding after January 16.

Mr. Gray: If your Honor please, I have the last volume—[fol. 1142] The Court: I can say, to relieve your mind on that situation, the record will show that Dr. Becker was on the witness stand, that the following morning the witness Dr. Becker was withdrawn from the witness stand and the defense counsel Mr. Matthews, who had placed Dr. Becker on the stand, moved to strike the testimony of Dr. Becker as incompetent, immaterial, and irrelevant. I agreed with him, and struck the testimony. So that ended the testimony, so far as the issues were concerned.

Mr. Gray: The motion to strike, your Honor, was a part of the evidence and part of the rulings in the case.

The Court: What you mean, so far as—nothing there that you would have to read, that is all that happened.

Mr. Gray: I have no transcript of the proceedings in the sanity trial, the sanity aspect of this case. I am merely asking for a reasonable continuance.

The Court: It appears now there are a few pages of transcript that would include everything up to and including the ultimate decision on the question of not guilty by reason of insanity. The Court will order that copies be prepared and copy delivered to the District Attorney and also copy to Mr. Gray. I will continue the matter until Monday at 9:15. I will change that—Monday, 9:00 o'clock, so that it won't interfere with the rest of our calendar.

Mr. Gray: If your Honor please, would it be possible for me to have until Wednesday?

[fol. 1143] The Court: No, I don't see any reason why that transcript can't be read between now and then; you have got Saturday and Sunday in which to read it. This is a delay occasioned by the defense and you have had the transcript since Monday.

Mr. Gray: That is true, your Honor.

The Court: In other words, just because counsel happens to be tremendously engaged, when you undertake to appear in a case, especially a case of this importance, and significance, the appearance, knowing what the situation is, assumes that you are going to take care of it.

Mr. Gray: If your Honor please, I have spent until 1:00 o'clock every night this week attempting to read this transcript and consider all the evidence in this case. I am not attempting to delay merely—

The Court: You would be pretty near through with the situation.

Mr. Gray: If your Honor please, I am not attempting to delay merely for the purpose of obtaining delay.

The Court: I think you should be able to read that transcript and be prepared for the matter at least for the purpose of taking the next step in the case by Monday.

Mr. Gray: Monday at 9:00, your Honor?

The Court: Monday at 9:00. I think anybody could read the entire transcript between now and Monday.

(Continued to Monday, January 30, 1950, at 9:00 a.m.)

[fol. 1144] The Court: We will call the case of People vs. Stroble.

Mr. Gray: Ready, your Honor.

The Court: Let the record show—

Mr. Gray: Excuse me, your Honor—

The Court: May I please make the record, Mr. Gray, so we have something to predicate our proceeding on?

Fred Stroble, you were heretofore arraigned under information 130,013 charging you with the crime of murder. Issues of fact were submitted to a jury under your plea of not guilty, which found you guilty of murder in the first degree without recommendation as to the penalty. As to the plea of not guilty by reason of insanity, which was also entered at the same time as the plea of not guilty, trial by jury as to that issue was waived. The Court, after hearing the evidence and considering the evidence, which was stipulated, found you sane. The matter of judgment and sentence was continued over until last Friday, and from that day, on motion of defense, to this day. Is there any legal cause why sentence should not now be pronounced?

Motion for Continuance and Ruling Thereon.

Mr. Gray: Yes, your Honor. At this time, I move for a continuance, for a further continuance on the ground that the time accorded to me to prepare for this phase of the trial, your Honor, has been unreasonably short, in that the transcript consists of 1,064 pages. Further, your Honor, [fol. 1145] I have not as yet received a complete copy of this transcript. I would like to invite your Honor's attention to the fact that at Page 999 of the transcript, at Line 5, the record shows that discussion was had in chambers. There is nothing in the record which indicates what took place at this discussion, nor can I ascertain from the record without this discussion whether the defendant's rights under the United States and the California Constitutions have been fully accorded him—because of my failure—because

of not having the complete copy of the transcript and this discussion.

The Court: Well, so far as that is concerned, discussions outside the courtroom, outside of the parties, except counsel, not infrequently relate to matters which are not properly a part of the trial, and since they are not part of the trial they don't go into the transcript. During the course of this proceeding certain irregularities were called to the Court's attention, matters which I felt that in fairness to the Public Defender's office should not be made public, and they were considered private and confidential and were so understood by the Public Defender's office. Naturally, matters thus taken up in the Court's chambers in conference are not part of the record.

Mr. Gray: Well, if your Honor please, at the proceedings in chambers there was a completion of this offer of proof and that appears from the record, and I am unable to determine from a perusal of the record whether any [fol. 1146] other evidence was offered or received in chambers during this discussion.

The Court: Everything which related to an offer of proof went into the record. There were other matters discussed, however, which were not any part of that proceeding, but related to an entirely different situation—in fact, for the purpose of the record, may I say related to certain misconduct of one of the defense counsel.

Mr. Gray: Well, if your Honor please—

The Court: That was something which did not affect the trial itself.

Mr. Gray: Well, if your Honor please, I should like this discussion in the record for the perusal of the Supreme Court at the time this goes up on appeal.

The Court: It had nothing to do with the trial whatsoever, it was not a matter that was considered by the jury, it was not a matter that was considered by the Court, it was not part of the trial.

Mr. Gray: Well, if your Honor please, I should like to determine that myself.

The Court: You can consult with the Public Defender's office who was there fully represented by three men, Mr.

Ellery Cuff, the Public Defender himself, Mr. Al Matthews, and Mr. John J. Hill, all Public Defenders.

Mr. Gray: Your Honor, I ask at this time that the reporter read these notes into the record, your Honor.

[fol. 1147] The Court: That request is denied, because that proceeding had nothing whatever to do with the trial.

Mr. Gray: Now, if your Honor please, then may I ask that the reporter read these notes to me so that I may ascertain what went on in chambers and take notes on this?

The Court: The court will not order that; also for the very good reason that that is confidential communication between Court and counsel, is not a matter that should be made public, it had nothing whatever to do with the merits of the trial, or the issues at the trial.

Mr. Gray: If this matter relates to misconduct of the Public Defender in this case, then I feel that I must, in order to protect this defendant's rights, know what this misconduct was, so that I may cite this as error, your Honor.

The Court: That is novel, to cite misconduct of the Public Defender as error on the part of the defendant, citing his own counsel's conduct as misconduct, as error. I want to say, however, that the misconduct referred to, referred to something which occurred out of court, did not form any part of the trial, and was a matter that never came to the attention of anybody except the parties directly concerned.

Mr. Gray: If this conduct, this misconduct on the part of the Public Defender—your Honor can readily appreciate that I would be in the same position of obtaining the information of this misconduct from the Public Defender's office, [fol. 1148] and I would not be in a position to ask them in the same way that I might ask your Honor as an impartial arbiter.

The Court: I don't follow you at all.

Mr. Gray: Well, if your Honor please, if it is misconduct on the part of the Public Defender, I have less likelihood of receiving the true status of the facts and what actually occurred in this discussion.

The Court: That is an unjustified reflection on the Public Defender's office.

Mr. Gray: I mean no reflection—

The Court: The misconduct I referred to was misconduct of one particular deputy.

Mr. Gray: And what deputy is that, your Honor?

The Court: Mr. Matthews—and I haven't any doubt at all if the matter were properly a subject matter to be made public, that you would get the full truth of the situation from either Mr. Hill or Mr. Cuff. However, in view of the excellent reputation and the high standards of the Public Defender's office, it was my feeling that an act of one deputy, who I understand has since left the office, should not reflect discredit upon the entire office where it had nothing whatever to do with the merits of the trial, and the substantial portion of it occurred before the trial ever commenced.

Mr. Gray: May the record be released with the understanding and with the statement from your Honor that this is [fol. 1149] not intended to reflect upon the Public Defender's office?

The Court: That is a good deal like giving a fellow a kick in the pants and saying, well, I didn't intend to kick him. I have no intention of making public something which had nothing whatever to do with the merits of the trial in the slightest degree. It was absolutely confidential. It was a matter that concerns the Court and the Public Defender's office. The District Attorney was permitted to be present so that if there were anything that they considered as having any relation to the case, that they might hear the matter as it occurred.

Mr. Gray: Then it is my understanding, your Honor, that your Honor has ruled that the reporter will not read these notes into the record?

The Court: I certainly will, because they were not part of this trial, had nothing to do with the trial, except that the conduct related to the case itself.

Mr. Gray: May— your Honor, may I then ask on this condition, that the reporter read these notes to me, on the understanding that these notes would be confidential, unless I find something prejudicial to the defendant's rights contained therein?

The Court: No, I have no intention of doing that at all. You are asking me to disclose to you something that had

nothing to do with the trial, doesn't affect the trial at all, that was strictly confidential between the Public Defender [fol. 1150] and myself. I called the Public Defender over because I thought something had been done which should not have been done, and informed him of it. There was no occasion particularly, perhaps, of making a record of it, but in view of the situation being what it was, I thought my reporter should be called in. It was not in connection with or any part of the trial.

Mr. Gray: A record was made, your Honor?

The Court: Yes, a record was made, certainly.

Mr. Gray: Then, if your Honor please, may I ask that the reporter get these notes, and these notes be impounded for a perusal by the Supreme Court of this State?

The Court: At this time the Court will deny that request also.

Mr. Gray: Has your Honor ruled on my request for a continuance?

The Court: I haven't found anything to continue yet.

Mr. Gray: On the ground, your Honor, that the time has been unreasonably short for me to prepare for a trial in this matter.

The Court: In that regard, the Court is going to require that you file an affidavit setting forth all of the facts in reference to this situation, the length of time that you have had this transcript, the opportunity that you have had to consult with counsel who tried the case, and a definite showing that you are not in a position now in which you could [fol. 1151] take the next step, which presumably is a motion for a new trial.

Mr. Gray: If your Honor please, will your Honor grant me until Wednesday to file this affidavit?

The Court: No. You are asking for the continuance now. It is your duty as counsel when you move for a continuance to support your motion by proof. As I stated Friday, I could read that transcript from Friday morning over the week end without any difficulty. I don't know why anybody else couldn't, and you had the transcript prior to that.

Mr. Gray: Your Honor's reputation for erudition is well known—

The Court: No, I don't consider myself unusual at all,

just an "ordinary fellow" like anybody else—when I say I could read it, anybody could read that many pages of transcript over the week end.

Mr. Gray: Your Honor is a great scholar and has had years of experience in criminal matters; and, as you appreciate, your Honor, I have not. I cannot just read this transcript, I must read it and digest it; and in addition to that, I have to look through the transcript while I digest it for any assignment of errors which I wish to make to protect the rights of this defendant. This man is on trial for his life, and he has been convicted, and the verdict of the jury is in. This is a very serious matter to me, your Honor, and I wish to have enough time so that I know that [fol. 1152] this defendant's rights have been fully accorded to him.

The Court: This defendant has chosen to reject the legal ability of the Public Defender's office, and substitute for the ability, which you say you do not have—I am not trying to be complimentary, but I think that Mr. John J. Hill and Mr. Ellery Cuff are among the most capable lawyers in the defense of criminal cases and have as wide a knowledge of criminal law as anybody I know of. The defendant has chosen to reject that service. Mr. Hill sat throughout the entire trial and is in a very good position to raise any questions which might be available or of value to the defendant upon motion for a new trial. This is just another one of those situations in which a defendant chooses—and I don't know whether that is a proper word to use—to substitute counsel at the eleventh hour to get somebody in who did not participate in the trial.

Mr. Gray: Well, if your Honor please, the defendant has a right to counsel of his own choosing. He has chosen me.

The Court: True, but a defendant hasn't a right to counsel of his choosing, to substitute counsel and then predicate a continuance upon it, because if that was a rule we could get—when you were thoroughly prepared, he could get somebody else and say, well, his new counsel is not prepared, we want time again.

Mr. Gray: Well, if your Honor please, I am well aware that this sentence must take place within twenty days. I am

[fol. 1153] not asking for an unreasonable continuance, I am only asking for a continuance of two days.

The Court: It isn't a question of sentence being pronounced within twenty days—as a matter of fact, that is not the law. I am asking you to file an affidavit to show why you are not prepared to make your motion at this time.

Mr. Gray: Well, if your Honor please, I should like to point out one additional thing, that Mr. Hill was not present during the entire trial of this case.

The Court: You can put that in your affidavit. You had better watch it, my impression is that he was.

Mr. Gray: I can invite your Honor's attention to the page of the record where your Honor states, "Let the record show that Mr. Hill was not present."

The Court: I recall that particular instance. We will just continue this matter over until our recess time, at a quarter of 11:00, to give you an opportunity to file your affidavit.

For the record, I am turning over to my Clerk a sealed memorandum entitled "Memorandum in People vs. Stroble", which I took and brought upon the bench before any of these proceedings occurred. I ask the Clerk to keep it.

(Adjourned to 10:45 a. m. of the same day.)

[fol. 1154] The Court: Call this People vs. Stroble again.

Mr. Gray: Ready, your Honor.

The Court: I still think the showing is insufficient. Rather than spend too much time—you want until Wednesday morning?

Mr. Gray: Yes, your Honor.

The Court: I want to call attention to the fact that this case was set down at the request of the defendant for Friday the 20th. Let me get that straight—the matter of judgment and sentence, at the request of the defendant was set down for Friday, January 27th, and substitution of counsel was approved by this Court—not on the 27th, but on the 23rd, when counsel presented the matter here in written form. Counsel has had the transcript ever since that time. When counsel engage themselves in a matter in which they know time is limited, you are not fair to the client; in other words, this affidavit is filed by Mr. Gray at the present time indicates, knowing he was going to be occupied during

a substantial part of the entire week prior to the date set for judgment and sentence, he still accepted an obligation which he knew in advance he wasn't able to meet. I still don't—frankly, can't see why that amount of transcript couldn't be read in the course of the available time. Of course, there is a desire to do other things, rather than to [fol. 1155] read the transcript, that would consume time. However, solely because of the fact I do not want this defendant to suffer from the neglect of counsel in any way, I am going to continue the matter until Wednesday morning at 9:00 a. m.

Now, there has been filed a most unusual sort of a procedure I have seen in a long, long time—we have what is denominated, "Affidavit in support of a motion to set aside waiver of jury trial". There has been no such motion ever made.

Mr. Gray: No, your Honor, that affidavit will be offered in support of a motion to be made.

The Court: Well, it is rather novel to offer proof in support of a motion which has never been made, which is going to be made in the future. However, it has been marked for the file and will be filed.

Mr. Gray: That is 9:00 o'clock, your Honor?

The Court: 9:00 o'clock Wednesday morning.

Mr. Alexander: Your Honor, referring back to that affidavit, you just mentioned; it will either be necessary for us to offer counter affidavits, or would you rather have Mr. Cuff and all persons present to testify?

The Court: I think it is always better to present the matter by oral testimony, if it can be, because affidavits do not correctly reflect the situation.

(Continued to Wednesday, February 1, 1950; 9:00 a. m.)

[fol. 1156] The Court: Call this People vs. Stroble.

In this case, let the record show that heretofore the matter of judgment and sentence was set down for January 27th, on which date the defendant was arraigned for sentence. On motion of the defense, the matter of judgment and sentence was continued over to January 30th; and on that date again continued over to this date. So that the defendant at this state of the record stands arraigned for judgment

and sentence. Just so the record is clear, at that time the Court inquired whether there was any legal cause why sentence should not now be pronounced. So we are taking on from that point.

Mr. Gray: Your Honor, I again move the Court for a continuance on the ground that the desired record has not been available to me. In support of this, your Honor, I invite your Honor's attention to Page 999 of the reporter's transcript, and particularly to Line 5, wherein it is indicated in parenthesis discussion took place in chambers.

The Court: We are going all over that for the third time, Mr. Gray. May I call your attention, Mr. Gray, under the law the defendant and the prosecution, neither one of them are entitled to any transcripts except as specifically ordered by the Court as daily transcripts. The Court ordered the daily transcript of the testimony. That is the only order that the Court has ever made. The Court is not making any [fol. 1157] different order.

Mr. Gray: If your Honor please—

The Court: May I continue, please?

Mr. Gray: Excuse me, your Honor.

The Court: The defendant is not entitled to any transcript prior to appeal, as a matter of right. The request is denied—denied upon the further ground the matter referred to there was no part of this trial whatsoever.

Mr. Gray: If your Honor please—may I continue my argument?

The Court: Yes.

Mr. Gray: No, If your Honor please, your Honor stated on Monday that it was a confidential communication between Court and counsel, and it is not a matter which should be made public, but your Honor further stated on Monday that, your Honor, that the District Attorney was permitted to be present; so that if there were anything that they considered as having any relation to the case that they might hear the matter as it occurred.

Now, your Honor, I submit that the defendant, and I as his counsel, have the same right to know what went on in those chambers.

The Court: Defendant's counsel was present and knew what went on at that time. There was nothing secret or kept

away from the defendant. Defendant's counsel was fully represented by his attorney of record at that time.

[fol. 1158] Mr. Gray: If your Honor please, the defendant was not present.

The Court: There was no proceeding—it was not a proceeding forming any part of the trial; therefore, the defendant was not entitled to be present.

Mr. Gray: If your Honor please—Is that your Honor's ruling at this time?

The Court: Yes.

Mr. Gray: If your Honor please, there was an offer of proof made in chambers, and that is a part of the proceedings in this case.

The Court: The offer of proof is in the record.

Mr. Gray: The defendant was not present at that time.

The Court: It is not necessary for the defendant to be present at the time of offers of proof; as a matter of fact, offers of proof are very frequently made at the bench or in chambers, so that the matter may not come to the attention of the jury. When a trial is in session the jury is present. I may say, also that, as to the offer of proof, it was an offer of proof to support an alleged request for voir dire of a juror after the juror had been sworn; and under the law quite obviously voir dire is not permissible after a juror has once been sworn; so regardless of what the offer of proof was, the request would have to be denied.

Mr. Gray: Now, if your Honor please, I should like to call Ward McConnell in support of my motion.

[fol. 1159] The Court: The motion is denied.

Mr. Gray: If your Honor please, your Honor has accorded me the right of further argument on this?

The Court: I have allowed you to argue. I am not going to allow you to introduce any evidence upon a matter which has already been ruled upon.

Mr. Gray: May I make an offer of proof, your Honor?

The Court: No.

Mr. Gray: Is your Honor denying me the right to make an offer of proof—

The Court: Yes.

Mr. Gray: —as to what this reporter would testify as to what went on in chambers?

The Court: Yes.

Mr. Gray: Your Honor, I feel this is very material to the rights of this defendant.

The Court: There is nothing at the present time in the nature of showing that anything which transpired in chambers had the slightest effect upon the case. It was a matter foreign to the trial itself, related to none of the facts or merits or any of the issues.

Mr. Gray: Now, if your Honor please—

The Court: There is no showing that it was. This is merely a fishing expedition, which the Court is not going to allow you to indulge in.

Mr. Gray: If your Honor please—

[fol. 1160] The Court: Pardon me.— May I speak without interruption, Mr. Gray?

Mr. Gray: Yes, your Honor, I beg your pardon.

The Court: The Court has already explained that the matter had nothing to do with the case itself, that matter was a confidential matter—out of respect for a member of the Bar it should not be made public, and I don't intend to have disgraceful matters or matters reflecting upon the Bar brought into the open courtroom when the matter has absolutely nothing to do with the merits of the trial. Everything relating to the trial was conducted here in the courtroom. As far as that is concerned, I will hear anything that occurred at that time.

Mr. Gray: Now, if your Honor please, the District Attorney has had the opportunity to determine whether that reflects on the merits of the case, and whether in his opinion anything transpired in chambers which concerned this case.

Now, your Honor has also had that opportunity. I have not had that opportunity.

The Court: But defense counsel had.

Mr. Gray: But, if your Honor please, there was a record made of the proceeding.

The Court: May I repeat again, it was not a part of the trial, did not affect the trial in any way.

Mr. Gray: My position is, your Honor, that I wish [fol. 1161] to ascertain that for myself so that I may properly—

The Court: Mr. Stroble's attorney at the time was aware of the entire situation. If that attorney chooses to give the information to you or to Mr. Stroble, I have no objection, but it still is not a part of the trial.

Mr. Gray: Then may I ask your Honor to take the stand?

The Court: The motion has been denied. There is nothing pending before the Court.

Mr. Gray: In that event, your Honor, I renew my motion and ask your Honor to take the stand.

The Court: And that motion is denied upon the ground that once a motion has been made it cannot be renewed.

Mr. Gray: The motion has been denied, your Honor?

The Court: For the fourth time, yes.

Mr. Gray: Your Honor wishes me to pass on to my next motion?

The Court: I haven't anything before me at the present time. There is no motion pending—other than has been published in the press, and of course I can't recognize that.

Mr. Gray: Well, that— Does your Honor wish me to proceed at this time?

The Court: I would be very much pleased with it. That is what we are here for.

Motion for a New Trial

Mr. Gray: I wish to state at this time, your Honor, defendant under no circumstances wishes to waive anything, and that any factual situation which indicates a waiver is [fol. 1162] by way of inadvertence and not intentional.

Your Honor, at this time I move for a new trial on all of the grounds set forth in the Penal Code, the State Constitution, and particularly the grounds set forth in Section 1181, and I ask at this time for a continuance for the argument on these grounds; and I wish to argue each and every ground as set forth under Penal Code Section 1181. I will wish to submit affidavits in support of several of those grounds. And, further, your Honor, I do not wish to waive the right to make any motion which I may desire to make at the time of the argument on the motion for a new trial. If your Honor will grant me a reasonable continuance for the purpose of making this argument.

The Court: The proceeding is just a little bit novel. This is the third time you have asked for a continuance. The last time it was set down at this time at your request for disposition. I am just wondering how long you are going to drag this out before we get down to a point before we have something presented to us that we can pass upon.

Mr. Gray: If your Honor please, it is my understanding that it is customary to set motions for a new trial for argument.

The Court: I am not saying that—only I would like to get some idea as to when we are going to dispose of the matter.

Mr. Gray: If your Honor please, I shall be ready to [fol. 1163] proceed at the date which your Honor sets it down for argument, if your Honor will give me a reasonable time.

The Court: Set the matter down for next Monday at 9:00 a. m. for argument. If any affidavits are to be prepared and served, the affidavits should be served upon the District Attorney not later than the end of Thursday of this week; so if they desire to make reply they may furnish affidavits of reply.

Mr. Gray: If your Honor please, Thursday is tomorrow. Some of these affidavits I will be unable to obtain—I will attempt to get those to the District Attorney's office not later than Friday at 5:00 o'clock.

The Court: All right. I will extend it to Friday at 5:00 o'clock.

Mr. Alexander: Suppose you make that Friday at 4:00, Judge.

The Court: All right. Make it Friday at 4:00. Mr. Alexander has in mind the fact that at 5:00 o'clock he will not be here.

Mr. Alexander: Exactly, your Honor. We would like to read something.

The Court: That doesn't mean that if you get them sooner, why, I think the District Attorney and the Court will both appreciate the situation.

Mr. Gray: As soon as I have the affidavits, I will see that they are served, your Honor.

(Continued to Monday, February 6, 1950; 9:00 a. m.)

[fol. 1164] The Court: People vs. Stroble. Let the record show defendant and counsel in court, the District Attorney represented. Let the record show heretofore the defendant was arraigned for judgment and sentence; proceedings up to the time of judgment and sentence were recited in the record. After several continuances, on February 1st, a motion for new trial was made, the grounds stated being all of the grounds set forth in the statute. The matter of argument was continued over to this date. You may proceed.

Mr. Gray: If your Honor please, it is my understanding, conversing with Mr. Henderson, that the prosecution wishes to put on Mr. Cuff and Mr. Bliss. I have no wish to detain these gentlemen, if they wish to proceed at this time to put Mr. Cuff and Mr. Bliss on the stand. I intend to offer the affidavit of Mr. Stroble in support of the motion to be made this morning, with my argument. If your Honor wishes me to proceed at this time . . .

The Court: We have a novel situation, I think all counsel should be apprised of—so far as the law is concerned, the only grounds for a motion for new trial are those enumerated in the statute. That has been repeatedly cited since a motion for new trial is a purely statutory proceeding and not a common law proceeding, the affidavit filed by Mr. Stroble, so far as I can see, does not come within any of the [fol. 1165] subdivisions of the section providing for grounds for a new trial. Furthermore, the affidavit filed was filed as the basis of an entirely different motion which was never made, so we have a very confused state of the record. At the present time, the only thing we have before us is the motion for new trial that was made the other day.

Mr. Gray: That is correct, your Honor. At this time, I move for a new trial on all of the grounds set forth—

The Court: You have already made that motion, you don't have to make it again.

Mr. Gray: In argument under Subdivision 1, Section 1181 of the Penal Code, your Honor, I urge on behalf of the defendant that the trial has been held in the absence of the defendant, as shows from the record at Page 999, Lines 7 through 11; that the proceedings in chambers were conducted out of the presence of the defendant.

The Court: Might I inquire this: Do you want me to rule on these points as you make them?

Mr. Gray: Yes, your Honor, if your Honor would be so kind.

The Court: So far as that is concerned, the record is entirely against you on that. The word "trial" has a very definite meaning and there is nothing with reference to the trial that occurred outside of the defendant's presence. It is a matter of common knowledge that very frequently during the course of the trial matters are suggested to the [fol. 1166] Court in the absence of the jury, sometimes offers of proof are made in the absence of the jury, questions are addressed to the Court—I have had occasions when counsel approached the bench for the purpose of ascertaining whether certain evidence would or would not be admissible, and so forth.

The trial is that portion of the proceeding in which anything which might have any effect upon the jury of a factual nature transpires. There is nothing that transpired of that nature. Furthermore, there is a total absence of anything which occurred in chambers which was any part of the trial; and as the Court previously stated, that related to a matter purely collateral and not part of the trial. So on that ground the motion is denied, so far as that particular ground is concerned.

Mr. Gray: Now, if your Honor please, under Subdivision 5 of the Penal Code, Section 1181, "The Court misdirected the jury in a matter of law, and has erred in a decision of questions of law arising during the course of the trial——"

The Court: Mr. Gray, it is not necessary to read the Penal Code every time you state it. Just state the subdivision. You can take it for granted I am reasonably familiar with it. In other words, you just point out those places in which you think there was an error of law.

Mr. Gray: I am referring to your Honor's limitation of the cross-examination by defense counsel of the psychiatrists Dr. McNiell and Dr. Palmberg, the psychologist, by [fol. 1167] the showing from the record, daily transcript, that your Honor repeatedly raised the objections which were not initiated by the prosecution——

The Court: Well, I wonder whether you are not under a

misapprehension. You referred to that matter also in your affidavit. Is it your contention that the Court has no power to make objections, must wait until counsel make an objection?

Mr. Gray: No, your Honor.

The Court: Well, I just wanted to get clear on that.

Mr. Gray: But by raising such objections, your Honor, it does place a serious limitation on the defendant's counsel to pursue—

The Court: Well, the Court has for sometime, whenever it is believed that the rules of evidence were about to be violated by a question asked, made the objection and ruled on the objection without waiting for counsel to do that. I have done that not merely as to questions asked by defense counsel, but I have done it with reference to questions asked by the District Attorney; and not infrequently counsel come in here who don't appreciate the objectionable character of a question, or the subject matter of a question, and therefore don't make the objection—I think it is a Court's duty to not merely—to use the vernacular—call the balls and strikes, but to see that the law is followed even though counsel don't raise the objection.

[fol. 1168] What was the page of the daily transcript, Mr. Gray?

Mr. Gray: It appears in Volumes 10, 11, and 12, your Honor; the last objection to which I refer appears in Volume 18.

The Court: Suppose we take them up one at a time. Will you just give me the paging on them?

Mr. Gray: Your Honor, I don't have these pages marked, and I wish to raise the objection at this time for the purpose of the record.

The Court: I would like to have you point out at least—blank shooting at an unknown mark—rather difficult for the Court to rule on.

Mr. Gray: If your Honor please, I can go through these and mark these pages one by one, if your Honor wishes.

The Court: Just tell me the pages.

Mr. Gray: The last objection, your Honor, was at Page 998, I believe, Volume 18.

Mr. Alexander: Isn't that where Mr. Matthews asked

permission to examine a juror on voir dire again? That is one of the objections?

The Court: As far as that is concerned, I don't have to look at that, because our courts have repeatedly held that any voir dire examination of a juror must be conducted before the juror is sworn; that the right to examine on voir dire absolutely ceases once the juror is sworn; and you are familiar with the elementary principles on voir dire, [fol. 1169] that as a matter of necessity voir dire is an examination of a witness, juror, or subject matter of testimony for the purpose of determining its competency; once the competency has existed, the voir dire ceases, as far as that is concerned.

Mr. Gray: Now, if your Honor please, I assume your Honor is referring to the case of People vs. Fairs.

The Court: I am not referring to any one particular case, I am referring to the broad rules as to voir dire.

Mr. Gray: As to voir dire, your Honor, it is my understanding from reading of the case of People vs. Galway that voir dire would be proper where we have not a verdict in each of the aspects of the case, one the murder aspect of the case and the other the sanity aspect of the case.

The Court: They have specifically held in a case identical with this that where counsel fails on voir dire, where the double defense was interposed, to ask any questions relative to insanity and then desire to do so before the insanity issue is about to be tried, that there was no occasion and no propriety in that examination; so we have exactly the precise situation.

Furthermore, the alleged point which Mr. Matthews attempted to raise was not a matter of voir dire at all. Had there been any basis for it, it would have been an inquiry into the propriety of allowing the juror to continue. Earlier during the course of the trial all of the alleged factual information upon which this demand for voir dire was made [fol. 1170] known to Mr. Matthews by his own investigator Mr. Ed Bliss, and in a discussion of the subject matter which gave rise to that information, at which time Mr. Matthews expressed himself as not merely satisfied but very well pleased with the juror.

So that we have another point there that the matter, if

it had had any merit, was known to Mr. Matthews a week or ten days before he made the demand for voir dire and he continued and allowed the juror to sit and to concur in the verdict. As far as that point is concerned, the objection is overruled, or the motion is denied.

Mr. Gray: Under Subdivision 6, the defendant now moves the Court to modify the judgment and find the defendant guilty of a lesser degree, of second degree murder; and in support of the motion under this subdivision I invite the Court's attention to masterful argument of Mr. Hill in this regard.

The Court: I will agree with the designation of Mr. Hill's argument, as to its being masterful—I am not trying to be complimentary at all, but merely a cold expression of judicial opinion—I think that Mr. Hill's presentation of the law of first degree and second degree murder was one of the finest things I have ever heard in the court room; he spoke without notes and covered the law thoroughly. I don't disagree with him in the slightest in his statement of the law, but in fact, as I told Mr. Hill afterwards, that I [fol. 1171] would have been perfectly satisfied to have the jury accept his statement as the Court's instructions, as to the difference between murder in the first degree and murder in the second degree.

Mr. Gray: Well, I have further points under this subdivision, your Honor, if your Honor wishes to rule on each point as we go—

The Court: So far as the question of the degree of the crime is concerned, I would not have had the slightest hesitancy, had the matter been submitted to me, sitting without a jury, to have found as a matter of law that the murder was murder of the first degree. I don't even have a doubt of that matter.

I might also say, in passing on that particular question, that while there was some testimony by the experts with reference as to whether the original act of choking the little girl with the hands was a spasmodic, instinctive or non-considered act, that was purely a matter of their opinion. The jury might well have arrived at a different conclusion, but I don't think that that is necessary to a decision

in the matter, because the child was not dead when the subsequent acts were committed.

Mr. Gray: And in this connection, your Honor is again giving the benefit to the defendant of a fresh consideration of all of the evidence, and this is your Honor's opinion?

The Court: I am passing on this exactly, and I am compelled [fol. 1172] by the law to pass upon this exactly as I would have to pass upon it if the issue of fact had been submitted to me without a jury; in other words, the trial judge, sitting on a motion for new trial, is bound by the reasonable doubt rule just as the jury is in arriving at a verdict; but I have no such doubt, nor do I have any doubt so far as the law and the facts are concerned here. Of course, basically, there is no dispute as to the fact, but purely a question of law.

Mr. Gray: In support of the motion under this subdivision, the decision as to the sanity or insanity of the defendant is contrary to law in that it is beyond the power of this Court to accept a waiver of the jury on a plea of not guilty by reason of insanity from this defendant.

The Court: What is your authority for that?

Mr. Gray: If your Honor please, I haven't finished my statement.

The Court: Yes.

Mr. Gray: Without first obtaining a waiver from counsel for the defendant, and the record shows, Volume 18, that Mr. Matthews made no auditory response at the time of this—

The Court: Well, that gets us back to an unfortunate situation. You have made the statement in your affidavit, and this is made under oath, that on the morning of the 20th of January the defendant was represented by Deputy Public Defender Al Matthews as his sole counsel. The record [fol. 1173] is entirely contrary to that; there is no support for that at all. I don't know where you got it, and your statement isn't true. At the very outset of this trial, upon the first appearance of this defendant in this courtroom, the case having been transferred here after the preliminary arraignment, the defendant was furnished with counsel by

the Judge appointing the public Defender of Los Angeles County as his counsel.

On the first appearance in this courtroom, acting for the Public Defender, there were two members of that office, Mr. Matthews and Mr. Hill. Mr. Hill remained with the case throughout the entire course of the trial and was present on the 20th; so that the statement that Mr. Matthews was the sole counsel for the defendant is not supported by anything in the record, but is contradicted by everything in the record.

Mr. Alexander: On that point, your Honor, it would appear by the affidavit filed by Mr. Gray that Matthews could or could not have been in this court room at the time of the waiver. I would like the record to show, if the Court please, that at the time of the waiver Mr. Matthews sat to the right of this defendant and was present in court at the time the waiver was taken.

Mr. Gray: I will stipulate that Mr. Matthews was present in court at the time the waiver was taken.

The Court: No question—the Court saw Mr. Matthews [fol. 1174] here, saw Mr. Ellery Cuff, the Public Defender of Los Angeles County, here; also Mr. Hill.

Mr. Gray: Now, in that connection, your Honor, your Honor has stated that my affidavit has stated that Mr. Hill was not present, that Mr. Matthews was sole counsel. In that connection, your Honor, I was present that morning. I know that Mr. Hill was not here; furthermore, from the daily transcript it appears that your Honor—

The Court: You mean to say that Mr. Hill was not here and that is what you saw and you make that as a statement to the Court—didn't you see Mr. Hill get up here, request the waiver of the jury as to the insanity issue, and turn to Mr. Stroble and ask him—

Mr. Gray: If your Honor please, I am referring to the morning session.

The Court: I am referring to the time when the jury was waived.

Mr. Gray: I think that your Honor will find from my affidavit that I did not make that statement that he was not here at the time the jury was waived; on the contrary, Mr.

Hill is the only counsel that said anything at the time of the waiving of the jury.

The Court: All right, you may proceed.

Mr. Gray: Now, it is my understanding that the sanity aspect of this case took only seven minutes for decision and that this waiver was received by the Court, although the [fol. 1175] defendant was not advised by his counsel—and I use that word advisedly, your Honor—as to the nature and meaning of the waiver; and this is by analogy tantamount to a plea of guilty without advice of competent counsel; and under the circumstances that I believe are here shown from the affidavit of Mr. Stroble, and by analogy to Penal Code Section 1018, that this waiver should be set aside and that the defendant should be accorded a right to trial by a jury on the issue of his sanity.

Now, if your Honor please, your Honor has stated that Mr. Cuff was present. Nowhere in the record of these proceedings is it indicated that Mr. Cuff was present or appearing for or on behalf of the defendant. The defendant's own affidavit states that he never talked to Mr. Hill; that he had never talked to Mr. Matthews regarding the waiver of this jury. Now, from the daily transcript it appears that Mr. Matthews and Mr. Hill were counsel for the defendant. It is my understanding from a reading of *People vs. Simmons* and in *re Hough* that the Deputy Public Defender in charge of the case is the attorney in the case and has all the rights of a private attorney in the case.

The Court: When a Public Defender in a County is appointed to defend, it is the Public Defender who is counsel just exactly as the District Attorney is counsel for the People, and the delegation as to who shall be the particular person to represent the client or who shall represent the [fol. 1176] People is left to the head of that office.

If an occasion arises in which the head of that office feels that the occasion warrants a change, particularly if it is his conscientious opinion in the interest of justice, and by reason of things which had transpired, such a change should be made, it is perfectly proper for him to step in. Mr. Cuff did step into this matter after the counsel Mr. Matthews had gratuitously insulted one of the jurors by making an accusation against him which was unfounded. I should do

the same thing if I had been in Mr. Cuff's place, if that had been the only thing upon which I based my action.

However, we have a situation in the record definitely setting forth what occurred at the time of the waiver in which Mr. Hill stated to Mr. Stroble that he had been informed it was his desire to withdraw the plea of not guilty—withdraw the trial by jury and to be tried by the Court without a jury. He asked Mr. Stroble if that was correct. The defendant replied that it was correct.

Mr. Hill then said, "It is your desire to waive the trial by a jury and have the issues now before the Court submitted to the Court?" And Mr. Stroble said, "That is correct." Whereupon the counsel for the People waived and Mr. Hill in person waived. So we have the waiver in person by all three parties: I think, however, in fairness to Mr. Cuff, in view of some of the allegations in the affidavit by the defendant, that while the Court could readily pass [fol. 1177] upon this matter and rule upon it without any further proceedings than those which occurred in the court room, particularly in view of what I said previously that the issue is not a question of law but the type of issue which would rather come under some other motion, I will permit the District Attorney to put Mr. Cuff and/or Mr. Bliss upon the witness stand for the purpose of setting forth what transpired between them and Mr. Stroble.

Mr. Alexander: Thank you, your Honor. That was our intention to ask permission to do so. Does your Honor wish to hear from them now?

Mr. Gray: Is it your Honor's ruling that Mr. Cuff is counsel in this case?

The Court: Mr. Cuff, the Public Defender of Los Angeles County, has been counsel in this case from the very inception of the case. At the time that this defendant first appeared in court without counsel, after the usual preliminary proceedings, inquiring as to his not having counsel, the Court appointed a Public Defender as counsel for the defendant. As far as I know, Mr. Cuff was then Public Defender—I think I can take judicial notice he was.

Mr. Gray: We will stipulate to that, your Honor.

[fol. 1178] ELLERY CUFF having been first duly sworn as a witness, was examined and testified as follows:

The Clerk: Your name?

The Witness: Ellery Cuff.

Direct examination

By Mr. Alexander:

Q. Mr. Cuff, you are the Public Defender of this County, are you not?

A. I am.

Q. And you were such on January 20, 1950, is that correct?

A. That is correct.

Q. As Public Defender, did the case of People against Stroble come into your office by assignment from the Superior Court?

A. It did.

Mr. Gray: Stipulate that it did.

Mr. Alexander: Thank you.

Q. Now, Mr. Cuff, on the afternoon of January 20, 1950, were you present in court when Mr. Hill, this defendant, and the District Attorney waived the right to a trial by jury on the question of insanity?

A. I was.

Q. Before that waiver was made by the defendant, Mr. [fol. 1179] Hill, and our office, did you have a conversation with this defendant?

A. Yes, I did.

Q. Where did that conversation take place?

A. In the jail compartment adjacent to the court.

Q. Who was present at that conversation?

A. Mr. Stroble, Mr. Ed Bliss, investigator in our department, and myself.

Mr. Gray: Excuse me, Mr. Alexander—at this time, your Honor, it is your Honor's ruling that Mr. Cuff was counsel in this case?

The Court: Yes, he was appointed at the very inception of the case. The Public Defender of Los Angeles County was appointed as counsel on the date of the arraignment, November 25, 1949.

Q. By Mr. Alexander: Now, Mr. Cuff, have you read the affidavit filed by the defendant dated January 26, 1950, in which a purported recital of the conversation was had between you and this defendant?

A. Yes, I read that.

Q. Now, Mr. Cuff, as best you can remember, would you give us the conversation you had with the defendant at that time?

Mr. Gray: To which the defendant will object on the ground that it is a privileged communication between counsel and the defendant.

[fol. 1180] The Court: Mr. Gray, that is ridiculous—you filed an affidavit stating the facts of that conversation, which opens up the entire conversation.

Mr. Alexander: That is the purpose I am asking this witness, if he had read the affidavit.

The Court: If there is any question whether that is a privileged communication, the Court at this time rules it is not.

Mr. Gray: Does the Court rule that matters in that affidavit have been waived?

The Court: The conversation that has been set forth with Mr. Stroble's version is certainly not privileged. If we had that situation, a defendant could make any sort of an affidavit and we would have to accept it, regardless of the facts which might exist, which would show it was absolutely false from beginning to end, on the privilege theory. In other words, when a defendant himself in effect takes the witness stand and testifies to a conversation, he opens that conversation for rebuttal. You may proceed.

By Mr. Alexander:

Q. Now, will you relate that conversation please, Mr. Cuff?

A. I told Mr. Stroble that the issue of not guilty by reason of insanity was coming up and certain decisions must be made, there were several courses open for him. At that time he said, "I want to do what is best."

I said I was going to leave it to him to make the decision. [fol. 1181] I told him that we could proceed with the jury as constituted and put him on the stand to testify, in which

case I believed that he would be subject to cross examination of all the details of this case. It was about that time, either at that time or a few minutes later, he says, "I can't expect anything from that jury. Get rid of them!"

I continued and said, "Or you could continue with the same jury and keep off the stand and submit it on the evidence that has heretofore been admitted"; that I had made a survey of the evidence, that I did not find anything in the evidence where we could take the affirmative position of proving he was not guilty by reason of insanity, but we could leave it up to the jury on the evidence that had already been adduced.

He again said, "I can't expect anything from that jury." And I am not sure whether he again said, "Get rid of them!" or not. I continued, and said, "Or we could waive the jury and submit the matter to the Court and you take the stand and testify, in which case you would be subject to the same cross examination as I have mentioned before."

He said, "I do not want to take the stand." And I said, "Well, you could waive the jury, submit the case, and not take the stand. Let the Court pass upon it." And he said, "I think that would be better."

"Well," I says, "think it over, now, this is very important; I will do anything that you wish me to do in the [fol. 1182] matter." And he said, "I would rather not take the stand, and I don't want the jury."

Now, that was the substance of the conversation. It took longer than that. There may have been a few little interruptions in the matter. I think I mentioned something about that we had worked day and night on this case and were very interested from the very beginning—

Mr. Gray: Excuse me, who had worked day and night?

The Witness: That we had.

The Court: May I interrupt just a moment, Mr. Alexander? Just what do you mean by saying that "we had"?

The Witness: Well, that is the words I used to Mr. Stroble at the time. I had reference to Mr. Matthews, Mr. Hill, Mr. Bliss, and myself.

Q. By Mr. Alexander: During that entire conversation was your investigator Mr. Bliss present?

A. He was.

Q. Now, during that conversation did you at any time say to this defendant, "Listen, Fred, I am taking over. Al is going on a vacation"?

A. No.

Q. Did you at any time during that conversation say to your investigator, Mr. Bliss, in the presence of this defendant, "Mr. Bliss, you tell him about it, don't you think it is best for him to waive the jury?"

A. No. No.

[fol. 1183] Q. Did Mr. Bliss at any time in that conversation or subsequent to your saying—or supposedly—I will start over.

Did Mr. Bliss then say, "Shall I get Al?" And then did you say, "No, we don't need him"?

A. No, not that I recall. Mr. Bliss said very little. I don't remember what he did say, but it was very little.

Q. Now, Mr. Cuff, after that conversation, you came into the court and you were present when the waiver was taken, is that right?

A. That is right. I may say, before we left Mr. Stroble at that time, we told him that he would have the opportunity of making his choice out in open court and it would be up to him what he said, we would follow his decision.

Q. During that conversation did this defendant appear to you to be rational?

A. Yes.

Q. Answer your questions?

A. Yes.

Q. And did he appear to understand what you were telling him?

A. Yes, there wasn't any doubt about it in my mind.

Mr. Alexander: Cross examine.

[fol. 1184] Cross-examination

By Mr. Gray:

Q. Mr. Cuff, when did you first meet the defendant Fred Stroble?

A. Either that morning or the morning before, I forget which it was, to talk to him.

Q. At that time, you were introduced to him by Mr. Matthews, who said, "Erèd, this is my boss, Mr. Cuff?"

A. Yes, and "What he says goes." There was considerable conversation that took place at that time, too.

Q. Now, you state, Mr. Cuff, that that was either the morning of the day of the sanity trial, or the day before?

A. That is right—I don't remember the date—I didn't make any memorandum of it.

Q. Was that in this courtroom?

A. Yes.

Q. You first met Stroble in this court room?

A. That is formally I met him, yes, to talk to him.

Q. You had not before that time talked to Mr. Stroble?

A. No.

Q. Now, Mr. Cuff, prior to that time, had you ever been in this court taking an active part in this trial in the case of People vs. Stroble?

A. I was taking an active part in the trial all through.

Q. In this court?

A. Well, I don't know how you can interpret that.

[fol. 1185] The Court: I think I can clarify that for you, Mr. Gray. So far as asking any questions or speaking orally during the course of the trial, I recall no occasion when Mr. Cuff did that. The entire proceedings, questioning, and argument were conducted by Mr. Matthews and Mr. Hill.

Q. By Mr. Gray: Now, Mr. Cuff, did you read, or have you read the daily transcript of the proceedings?

A. Not in toto.

Q. Pardon?

A. Not entirely, because the last proceeding here I didn't obtain the transcript. Mr. Matthews had the transcripts and they were not returned to my office. I think you got them.

Q. Did you wish to finish?

A. I think I have finished.

Q. Now, what portions of the daily transcript of these proceedings had you read?

A. Well, I don't know—considerable portions, when I could get my hands on them. I will say this, that every evening we had consultations and we went over the evidence—when I say "we", Mr. Hill and Mr. Matthews, some-

times all three of us together, sometimes individually—went over all the evidence that was adduced at the trial.

Q. Was that every evening?

A. Virtually every evening, unless something else interrupted, but all the testimony and the evidence was gone into, [fol. 1186] and witnesses that were called in to testify—some of them testified here later and some did not testify—I had conferences with those in my office. We had Dr. Rowe, who did not testify, talked to him; talked to Dr. Becker; talked to Dr. Frostig at considerable length in my office before he testified.

Q. Now, Mr. Cuff, is it not true that for a period of time of approximately five days to a week during the trial of this action, you were not present in Los Angeles?

A. That is right. I came back here on Friday, the first Friday in January, I believe.

Q. Now, Mr. Cuff, is it not true that to your knowledge Mr. Matthews kept this daily transcript with him at all times?

A. Yes, that is right. Sometimes he would leave it on his desk and I went in and read it.

Q. You mean during the lunch hour?

A. Yes, and I would go in and read it, portions of it; but then I would have the report from Mr. Matthews as to what each witness had said and what witnesses we had. I may explain, Mr. Gray, that on the plea of not guilty the affirmative is on the prosecution's side; on a plea of not guilty by reason of insanity—

Mr. Gray: Mr. Cuff, if you please—

• The Court: Let him finish. Just a minute.

The Witness: On a plea of not guilty by reason of insanity, the affirmative is on our side, and in so far as the [fol. 1187] testimony given on the prosecution, I will say that I did not contact all those witnesses and possibly did not read the testimony of all those witnesses; but I did talk to Mr. Hill and Mr. Matthews as to what had been testified to.

Now, on a plea of not guilty by reason of insanity, I think we made a very complete survey of the proposed testimony to be adduced, and in that situation I took part in conversations of nearly all of the witnesses that would testify.

Q. By Mr. Gray: Now, Mr. Cuff, during your conversation with this defendant—and that conversation took place in the prisoners room, did it not?

A. The one in the afternoon?

Q. Yes.

A. Yes, that is right.

Q. The conversation you had, either in the morning or the day before, was limited to the introduction, was it not?

A. No, it wasn't.

Q. Did you discuss with the defendant at that time waiving the jury on the sanity aspect of the trial?

A. No, I did not, not in the court room—the first conversation.

Mr. Alexander: Wait a minute. He didn't finish.

The Witness: I want to clear that up—not in the court—that first conversation referred to, that probably hadn't come up yet.

[fol. 1188] By Mr. Gray:

Q. You did not discuss with the defendant at that time the possibility of waiving the jury, or discuss it with him in any way that the jury might be waived or should be waived?

A. Well, that proposition hadn't come up yet, so far as I know.

Q. Now, on the afternoon of January 20, Mr. Cuff, when this discussion with the defendant took place, was that before the court convened?

A. I believe it was. Yes, I am sure it was before the court convened for the 2:00 o'clock session.

Q. The Court did not take a recess for the purpose of allowing you to confer with Mr. Stroble?

A. No.

Q. Approximately how long did your conversation with Mr. Stroble take on that afternoon?

A. Oh, I would say between five and ten minutes.

Q. Did you tell Mr. Stroble substantially, Mr. Cuff, that if he were put on the stand before the jury that additional evidence might come out that would be harmful to him?

A. I said it was possible.

Q. Did you tell him that there was evidence of molest-

tion of other little children that would come out and had not as yet come out?

A. I think I said that they would cross examine him on all molestations, that this is an issue on his mentality now. [fol. 1189] Mr. Gray: Mr. Reporter, would you read back the question, please?

(Last question and answer read by the reporter.)

The Court: That last sentence, was that what you stated to Mr. Stroble, or is that your present testimony?

The Witness: No, that is what I told Mr. Stroble.

The Court: All right, I see. In other words, in effect, you told him that since his questions of sanity or insanity was in issue, that under the rules with which I think we are all familiar, evidence of any conduct in the past which might shed any light upon the question of sanity or insanity would be admissible?

The Witness: That is the gist of the advice I gave him.

By Mr. Gray:

Q. Now, Mr. Cuff, my question is: In that conversation with Mr. Stroble, did you tell him that evidence of molestation of other children would come out and be placed in the record, that it was evidence which was not in there at that time, in the record?

A. I told him that it was very probable that it would—that is more general discussion there.

Q. Now, at that time, Mr. Cuff, did you tell him that this evidence would be of a child molesting charge or accusation in Hawaii?

A. No. I don't think I said anything about Hawaii at all, not to him.

Q. Did you refer at that time to the previous charge [fol. 1190] now pending against this defendant?

A. No.

Q. Did you refer to any of the little girls who were involved in that charge?

A. I referred to no specific child or girl.

Q. You just referred to other possible evidence?

A. That is right. I think that was in my reply to some—when I said something about, "You could expect the

District Attorney to cross examine on all the details—"and then there was a slight, short discussion of that—what was exactly said, I do not know, but it was, in effect, that they would go down the line on all possible molestations that he may have been engaged in.

Q. And you felt at that time that was harmful?

A. I felt that it would do no good, so far as not guilty by reason of insanity issue was concerned. And you asked me how I felt: I felt perfectly justified at that stage of the proceedings, if I wished, to withdraw the plea of not guilty by reason of insanity entirely, having in mind the evidence that was available. But I did not say that to him.

Q. You were aware, Mr. Cuff, that the evidence of other child molestation acts was presented to this Court in the confession read by Deputy Chief Brown?

A. Yes.

Q. You were aware of that at that time?

A. Yes, I surely was.

[fol. 1191] Q. Mr. Cuff, did the defendant ask for Al when you were talking to him?

A. No, not to my recollection.

Q. To your recollection, did anyone say, "Shall I get Al?"

A. No.

Q. You did not hear that statement?

A. I didn't hear that statement.

Q. Did you ever tell this defendant at any time during the conversation, "Al is going on a vacation. I am taking over"?

A. I don't remember any words like that being said by anybody.

Q. You are aware, Mr. Cuff, and you have read Dr. Parkin's report, have you not?

A. Yes, I have.

Q. And you are familiar with that portion of Dr. Parkin's report wherein he states that the defendant's mentality is impaired?

A. Yes.

Q. And this conference took five or seven minutes, Mr. Cuff?

A. I think so, about that.

Q. And immediately after that the defendant was re-

turned to this court room and the waiver of the jury in the sanity aspect of the case was entered in the record? [fol. 1192] A. As set forth in the record, yes.

Q. That was the first time you had talked to the defendant concerning that?

A. Concerning the change of—waiver of the jury?

Q. Concerning the waiver of the jury?

A. That is right.

Mr. Gray: That is all.

Redirect examination

By Mr. Alexander:

Q. Mr. Cuff, when you spoke of the evidence available, did you consider the report of Dr. McNeil?

A. I considered the reports of all the doctors, Dr. McNeil—

Q. Dr. Wyers?

A. Dr. Wyers.

Q. Dr. Parkin?

A. Dr. Parkin.

Q. Dr. Crahan?

A. Dr. Crahan.

Q. Dr. Frostig?

A. That is right. Dr. Becker and the conversation I had with him—and Dr. Rowe.

Q. How about Dr. Belt?

A. Yes, I talked to Dr. Belt, and had that in mind, and also Dr. Rowe, as I mentioned before.

Q. And you had all those reports in mind when you told [fol. 1193] counsel that you had considered the evidence available?

A. That is right.

Mr. Alexander: That is all.

The Court: Just one or two questions, Mr. Cuff:

By the Court:

Q. You have been in the Public Defender's office how long, roughly?

A. Over twenty years, twenty-one years.

* Q. And is this an isolated instance of waiving a jury in an insanity defense case?

A. It has been done dozens and dozens of times, your Honor. I have assumed that responsibility many times before.

Q. Done it right in my department a number of times?

A. Yes. Plea of not guilty by reason of insanity—if we had not enough evidence to sustain not guilty by reason of insanity at the conclusion of the first issue, we would withdraw the plea of not guilty by reason of insanity, or sometimes waive the jury and submit that to the Court on that issue.

The Court: That is all.

Mr. Alexander: Thank you, Mr. Cuff.

Witness excused

Mr. Alexander: Mr. Bliss.

Mr. Gray: Might I ask one more question of Mr. Cuff?

The Court: Certainly.

[fol. 1194] Recross examination

By Mr. Gray:

Q. Mr. Cuff, this was your decision, was it not, to waive the jury?

Mr. Alexander: Just a moment. What do you mean by that—"this was your decision"? I think the defendant waived that in open court himself.

The Court: I think the question is a little ambiguous as to whether you mean whether Mr. Cuff had arrived at the conclusion that that was the advisable thing to do or whether Mr. Stroble's decision was Mr. Cuff's decision. Sustain the objection as to the form of the question as ambiguous.

Mr. Gray: I will rephrase the question.

By Mr. Gray:

* Q. Mr. Cuff, you say it was your opinion that the defendant's rights would be benefited and his cause benefited by this waiver?

A. No, I don't think I would say it would be benefited at all.

Q. You were acting in the best interest of the defendant?

A. I was acting in the best interest of the defendant—after all, there was a regular procedure of doing things, and I couldn't see any use going through with useless waste of time after the witnesses—

Q. Did you consult with Mr. Hill with regard to the [fol. 1195] waiving of the jury?

A. Yes.

Q. Did you consult with Mr. Matthews?

A. Yes.

Q. When did you first tell Mr. Matthews that this jury was going to be waived?

A. I didn't tell Mr. Matthews it was going to be waived until after it was done. I never did tell him that. We conferred as to what would be the proper thing to do prior to the jury waiver.

Q. Now, in regard to waiving the jury, did you talk to anyone other than Mr. Hill and Mr. Matthews, seeking advice?

A. Well, I had made up my mind that I wouldn't recommend anything, I would leave that entirely to the defendant; but the general proposition, I did talk to another man that I had a great deal of confidence in.

Q. Who was that?

A. That was Judge Neeley.

The Court: You are referring to William B. Neeley, now Superior Court Judge, who was in the Public Defender's office about twenty years?

The Witness: That is right.

The Court: And was Public Defender immediately preceding your being Public Defender?

The Witness: That is right. I want to be very careful not to jeopardize the defendant's rights in any way, that [fol. 1196] is all.

Mr. Alexander: Thank you, Mr. Cuff.

The Court: Do you gentlemen need Mr. Cuff any more?

Mr. Gray: Mr. Cuff may be excused as far as the defense is concerned.

The Court: Mr. Cuff may be excused.

Witness excused

Mr. Alexander: Mr. Bliss, please.

EDWARD N. BLISS, having been first duly sworn, as a witness, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Edward N. Bliss.

Direct examination

By Mr. Alexander:

Q. Mr. Bliss, what is your occupation, please?

A. Investigator for the Public Defender of Los Angeles County.

Q. Was that your occupation on the 20th day of January of 1950?

A. It was.

Q. You are and were the investigator in the case of People against Stroble, for the office of the Public Defender, is that correct?

[fol. 1197] A. I was one of them, yes.

Q. One of them. Mr. Bliss, were you present in court on the 20th day of January, 1950, shortly before the afternoon session began?

A. I was.

Q. Did you go with Mr. Cuff into the prisoner's pen before that session began on that day, at the 2:00 o'clock session, I mean?

A. Yes, I did.

Q. Were you present at a conversation between Mr. Cuff and the defendant at that time?

A. I was.

Q. Will you relate the conversation as far as you can remember it?

Mr. Gray: Now, if your Honor please, I again renew my objection on the ground that it is privileged.

The Court: Objection overruled.

The Witness: Mr. Cuff headed into the room and called me to accompany him, and as we went in we approached the defendant Stroble, and Mr. Cuff said to Mr. Stroble, in substance, "The time has come, Mr. Stroble, where you will have to decide as to how you want to continue in this." At that time I, not knowing whether Mr. Cuff had previously become acquainted with Mr. Stroble, started to identify Mr. Cuff to him; and Mr. Stroble stated, "Oh, I know Mr. Cuff."

[fol. 1198] Mr. Cuff explained about whether we could continue with the jury, or whether to waive the jury at that time; and Mr. Stroble said, "I have had enough of that jury. Get rid of them!"

Later on he explained it—he explained that also—Mr. Cuff explained also that instead of continuing with the jury that he could waive the right to a jury and submit it to the Judge; and Mr. Stroble replied again at that time, "Let's get rid of that jury!"

Just before we left the room, I turned to Mr. Stroble, who I had talked to on many different occasions during the trial, and said, "Fred, just so there will be no misunderstanding after we get out here, what do you want to do? Do you want to keep the jury, or do you want to get rid of it?"

He said, "No, get rid of it!"

Mr. Gray: You said this, Mr. Bliss?

The Witness: No, the defendant said that.

Mr. Gray: Excuse me. I didn't get that. I didn't understand.

The Witness: Maybe I misunderstood.

Mr. Gray: You said this to the defendant?

The Court: No—that question, you said this?

Mr. Gray: You made the statement—just so there will be no misunderstanding—that was your statement?

The Witness: That was my statement; just before we [fol. 1199] came out of the prisoners room I turned to Fred and said, "Now, Fred, just so there will be no misunderstanding, I want to get it clear: Do you want to tell me what you want to do?"

He said, "I want to get rid of that jury!"

We came out here then and the trial continued.

By Mr. Alexander:

Q. Mr. Bliss, you sat here in court alongside this defendant during the entire trial, did you not?

A. I was absent for about two hours one afternoon, at which time Mr. Lane, another investigator in my office, sat in.

Q. And before today, or before the day the defendant waived the jury trial, you had many conversations with this defendant, did you not?

A. Oh, yes, many of them.

Q. And had visited him on many occasions up in the county jail?

A. I had two or three conversations in the county jail—most of my conversations with the defendant were in the prisoners room adjacent to this court room during the trial.

Q. Mr. Bliss, at any time during that conversation on January 20, 1950, did you hear Mr. Cuff say to this defendant, "Listen, Fred, I am taking over. Al is going on a vacation"?

A. Mr. Cuff didn't say any such thing—anything like [fol. 1200] that.

Q. In that conversation did Mr. Cuff at any time say, "Mr. Bliss, you tell him about it, don't you think it is best for him to waive the jury?"

A. No, there was nothing like that said at any time.

Q. Did you at any time say, "Shall I get Al?" And did Mr. Cuff at any time reply, "No, we don't need him"?

A. No, no, I don't—nothing like that was said.

Q. When you spoke to this defendant on this day, did he appear to you to be rational?

A. Yes.

Q. Did he appear to understand what you were talking about?

A. Yes.

Q. Did he answer your questions?

A. Yes.

Mr. Alexander: Cross examine.

(Intermission.)

Mr. Gray: Excuse me, your Honor. Might we have a brief recess?

The Court: We will take a short recess in this proceeding while I call the trial calendar.

(Recess.)

The Court: The record will show after recess the defendant and counsel both present. You may proceed.

Mr. Alexander: I believe I had finished with the [fol.1201] witness.

The Court: Yes, you had turned him over for cross examination.

Cross examination

By Mr. Gray:

Q. Mr. Bliss, you are the chief investigator for the Public Defender's office?

A. I am in charge of investigations for that office, yes.

Q. Now, the other investigators in the office, Mr. Lane and Mr. Nagel, also worked on this case, did they not?

A. Yes, they did.

Q. How long, Mr. Bliss, in a period of time, minutes, did this conversation with Stroble take?

A. Are you referring to the one in the prisoners room?

Q. The one which you have testified occurred in the prisoners room.

A. Approximately five to ten minutes, probably closer to ten minutes.

Q. Do you recall whether that took place before the Court was in session or during a recess after Court was in session that afternoon?

A. It took place just prior to the convening of court for the afternoon session, to the best of my recollection.

Q. Do you recall the approximate time?

A. Approximately ten minutes of two.

[fol. 1202] The Court: The record might help you. The transcript shows that the Court called, on Friday, January 20th, at 2:00 p.m., and we proceeded at that hour.

Mr. Gray: Yes, your Honor. The only evidence that I have to the contrary is the hearsay statement as it appears in the Los Angeles Times that at 2:23 the court convened.

The Court: I have the highest respect for the Los Ange-

les Times, but I have to follow my records, not that of the Los Angeles Times.

By Mr. Gray:

Q. And after this conversation took place, Mr. Bliss, you then returned to the court from the prisoners room?

A. That is correct.

Q. In company with the defendant, or did he remain in the room?

A. If he didn't—

Q. Do you recall, Mr. Bliss?

A. I recall that I came out followed by Mr. Cuff, and I believe that the defendant came out at the same time that the Court was convened at that time.

Q. Now, was Mr. Cuff present at this conversation that you had with the defendant when you stated to the defendant, "Just so there will be no misunderstanding, I want to get it clear, do you want to tell me what you want to do?"

A. Was Mr. Cuff present?

Q. Yes, at that time.

[fol. 1203] A. Yes, he was present.

Q. Had you explained to the defendant what was meant by waiving the jury?

A. Mr. Cuff amply explained that in detail.

Q. Did you explain it, Mr. Bliss?

A. No, I did not.

Q. Your reason for asking this question was that you thought there might be a misunderstanding?

A. Not at all.

Q. Other than this conversation which you stated occurred just before you came back into court from the prisoner's room, did you have any other conversation with the defendant Stroble in the prisoner's room?

A. Not at that time.

Q. This is the only statement which you made to the defendant, then, the one to which you have testified?

A. No. Mr. Cuff stated to the defendant—

Q. Now, Mr. Bliss, I am asking for your statement?

A. My statement?

Q. Any conversation other than what you have told us with this defendant that occurred in the prisoner's room on that afternoon?

A. Yes. I made an additional statement to the defendant.

Q. All right, what was that statement?

A. It ties in closely with a statement made by Mr. Cuff. May I give that?

[fol. 1204] The Court: Yes. That is what you were trying to tell us a minute ago when you were interrupted?

Mr. Gray: I am asking for his statement, your Honor.

The Court: Well, Mr. Gray, if his statement ties in with the statement of Mr. Cuff, the entire conversation is obviously admissible; in other words, an isolated statement is not admissible, where it now appears that the context has an effect upon it.

Mr. Gray: I have no wish to keep out any of it.

The Court: I understand that, but I think Mr. Bliss should be entitled to state what the entire conversation between the parties was; so we get the entire picture.

The Witness: Mr. Cuff stated to Mr. Stroble, "We worked night and day on this case." And I replied at that time, "Fred knows that, because I was out on New Year's Day and half the night many times." And Fred, the defendant Stroble at that time replied, "Yes, I know you have worked a lot on it."

By Mr. Gray:

Q. Now, is that all of the conversation that you recall that you had with the defendant in which you took an active part?

A. That is all that I remember, yes.

Q. Do you recall stating in the presence of this defendant—

The Court: Change the form of the question—I will have to sustain an objection to it, because you are assuming the [fol. 1205] statement was made; when you ask a witness whether he recalls something, you are assuming it was made.

By Mr. Gray:

Q. Do you recall if a statement was made by you in the presence of this defendant, "Shall I get Al?"

A. No, I didn't make that statement or ask that question.

Q. Did you mention Al Matthews' name?

A. Not that I recall, except in the conversation about working night and day I believe Al's name was mentioned that time. I don't know whether it was by me, by the defendant, or by Mr. Cuff.

Q. Did you hear any conversation between Mr. Cuff and this defendant concerning the production by the prosecution of additional evidence of child molestation?

A. Mr. Cuff—

Q. Did you hear—

Mr. Alexander: Let him tell what he heard.

Mr. Gray: —such a conversation?

Mr. Alexander: That will be asking for a conclusion, if your Honor please.

The Court: Wait a minute, Mr. Alexander. I think the question was, was that subject discussed at all.

The Witness: Yes, that subject was discussed.

By Mr. Gray:

Q. All right, will you state what was said in that regard?

A. Mr. Cuff explained to the defendant that, in explaining the different alternatives that he had.

[fol. 1206] Mr. Gray: If your Honor please, by "explaining;" I mean what Mr. Cuff stated; otherwise it is a conclusion.

The Court: Well, I think that is a matter of phraseology.

The Witness: If I may say, I made no notes at that time, and the discussion of Mr. Cuff with Mr. Stroble concerning what could be brought out or what Mr. Stroble desired to do in regard to whether to continue with the jury or not, that was primarily between those two, and I did not make close notes.

The Court: That was a question of law a little bit over your head?

The Witness: Yes.

Mr. Gray: Excuse me, your Honor—

The Court: A question of law a little bit over Mr. Bliss's head. I hope you will pardon me for asking the question.

Mr. Gray: Of course, your Honor, that is a point which I am seeking to make, if it is over Mr. Bliss's head as a man experienced in these matters, certainly it is over the defendant's head.

The Court: Not necessarily. The legal part of it might have been over Mr. Bliss's head.

The Witness: May I give an explanation here?

The Court: Certainly.

The Witness: The conversation with the defendant and [fol. 1207] myself was very clear and I understood every bit of it, but to repeat to the Court or Mr. Gray here the exact wording used, I would rather not do so, because I am not adept enough in legal phraseology to repeat it exactly as it was given, word for word.

By Mr. Gray:

Q. Mr. Bliss, I am not interested in having a parrotted-back version, all I am interested in is the substance of what was said. We are after the truth here.

A. Mr. Cuff explained to—stated to the defendant that he could continue with the jury, he could take the stand and testify, at which time of course he would be subject to cross examination; he could refuse to take the stand, or he could waive the jury. I believe that Mr. Cuff used the phrase, "waive it," or "get rid of the jury," and that is when the defendant Stroble stated that he wanted to get rid of the jury, he had had enough of it.

Then Mr. Cuff continued to explain that there was the possibility that if he took the stand and testified that he would be questioned about his entire background and the phrase "all sex molestations" was brought in, but I don't recall just in what particular phraseology it was brought into the conversation.

Q. Now, you have stated to us at this time all of the conversation which you recall that took place in the prisoners room on January 20th in the afternoon?

A. Yes.

[fol. 1208] Q. And immediately after that conversation you returned to the court?

A. Yes.

Q. From the room?

A. That is correct.

Q. Approximately how long a period of time would you say elapsed from the time you left the prisoners room until Mr. Hill commenced proceedings here?

A. I don't know.

Q. Was it almost immediately?

A. There was some confusion when court was convened, but I don't know. I think the entire proceedings were over with within half an hour.

Q. Well, would you say that the proceedings commenced and the Court convened at approximately five minutes after this conversation, or three minutes?

A. I believe that the Court convened and the proceedings were commenced almost immediately after we came out of the prisoners room.

Q. You did not take any active part in explaining to this defendant the nature of the waiver?

A. I questioned him just before we left the prisoners room, so that I would have the conversation between Mr. Stroble and myself, rather than between Mr. Stroble and another party; so that there would be no misunderstanding as to the fact that he wanted to get rid of the jury.

[fol. 1209] Mr. Gray: That is all.

Mr. Alexander: Nothing further: Thank you.

Now, that is the evidence we have on that issue, if the Court please, if it is an issue.

The Court: Well, as I stated previously, I have permitted the testimony because, rather in fairness to Mr. Cuff, and because it was good legal procedure. The motion—

Mr. Gray: If your Honor please, I haven't completed.

The Court: —to set aside the waiver—I just want to get this into the record—

Mr. Gray: Surely.

The Court: The motion to set aside the waiver of a jury trial is not an available motion, and in fact never has been. Treating the matter as a part of the motion for a new trial, a situation such as this does not come within the purview of the motion for new trial. So that there might be a complete presentation of the point which the defendant has raised, I have allowed the testimony to be introduced and the question to be argued and presented.

Mr. Gray: Now, if your Honor please, the only evidence on the part of the defendant in this connection is his affidavit. As your Honor has indicated, you feel that it is good legal procedure to have oral testimony on this matter,

and in that connection I will at this time, your Honor, call Fred Stroble to the stand.

The Court: You may do so.

[fol. 1210], FRED STROBLE, the defendant herein, having been first duly sworn as a witness, was examined and testified as follows:

The Clerk: What is your name?

The Defendant: Fred Stroble.

Direct examination

By Mr. Gray:

Q. Fred, can you see me? Fred, you are the defendant in this action?

A. Yes.

Q. You are acquainted with Al Matthews, are you not?

A. Yes.

Q. Now, he has been your attorney in connection with the defense of this action?

A. From the beginning up to the insanity trial.

Q. Have you ever—up to that time, Fred, did you ever talk to any other attorney in connection with your case?

A. No, I did not.

Q. That is, from the Public Defender's office?

A. No, I did not.

Q. When did you first meet Mr. Cuff?

A. It was that day in the insanity trial, afternoon—or maybe in the morning—I don't recall.

Q. Were you introduced to Mr. Cuff at that time?

A. Al Matthews, he told me, he said, "This is my boss," and he told me his name, "Mr. Cuff," and he said, "He is [fol. 1211] going to take over."

Q. Now, did you have a conversation with Mr. Cuff later on that day, that is, in the afternoon did you talk to Mr. Cuff then?

A. The only thing that I remember is when Mr. Cuff sat on the counsel table.

Q. Mr. Stroble, I am asking you—and you may answer the question yes or no—whether you had a conversation

at which Mr. Cuff and Mr. Bliss were present, on the afternoon of January 20th, which is the afternoon when your sanity trial concluded?

A. Yes, I did.

Q. Where did that conversation take place?

A. In the prisoners room.

Q. Now, you were in the prisoners room?

A. Yes.

Q. And they came back to see you?

A. Yes.

Q. Now, will you state what Mr. Cuff said to you when he came back to the prisoners room?

A. Mr. Cuff came in and he told me, he said, "Fred," he said, "I am going to send Al on a vacation, and I am going to take over." When he said that, then, that was I know I was lost, because Al knows I had lots of confidence in Al.

Mr. Alexander: I will ask this latter part be stricken, if the Court please.

[fol. 1212] The Court: I will allow it to remain in.

Mr. Gray: Go ahead, Mr. Stroble.

The Witness: And I know he tried to help me and he worked pretty hard, that is why I have lots of confidence in him, I know he was a very sincere boy.

By Mr. Gray:

Q. Now, was Al's name mentioned during the course of your conversation with Mr. Cuff?

A. Yes.

Q. Who mentioned his name?

A. Mr. Bliss said, when Mr. Cuff started in about waiving the jury and what he going to do, Mr. Bliss said—well, before he let him finish he said, "Shall I get Al?" Mr. Cuff said, "I don't need him," or "We don't need him."

Q. Mr. Stroble, did you ever state to Mr. Bliss or Mr. Cuff, "Get rid of that jury, I can't expect any mercy from them"?

Mr. Alexander: Well, that is assuming a fact not in evidence, if the Court please.

The Court: Well, I see the objection—it is not a quote, it is rather the situation of setting up a straw man, as to

whether something was said, it isn't what anybody claimed to have been said. The objection, however, will be overruled.

Mr. Gray: I will rephrase the question, your Honor.

Q. Mr. Struble, did you say to either Mr. Bliss or Mr. Cuff at the time of this conversation in the prisoners [fol. 1213] room on Friday afternoon, January 20th, that was when your sanity trial took place, "I have had enough of that jury, let's get rid of them"?

A. I did not say that. First, I didn't even know that could be done. I always had that idea that a jury and counsel should be there from the beginning to the end. That was my idea. How can I say, "Get rid of the jury"? It would be impossible for me to decide it.

Q. Did Al Matthews ever talk to you about getting rid of the jury?

A. He never did.

Q. Did Mr. Hill ever talk to you about getting rid of the jury?

A. Mr. Hill never spoke to me, not one word, all during the trial, not even look at me. He always turn his face to me.

Q. Fred, do you know what "waive the jury" means?

A. No, I don't know. I do not. How could I know that? Sixty-eight years old, never been in court in my life. This was the first time I ever been in a court room, never been a witness; the first time I got in trouble was when I was sixty-seven years old.

Mr. Gray: Cross examine.

Cross examination

By Mr. Henderson:

Q. How long have you known Ed Bliss?

[fol. 1214] A. I know Mr. Bliss, I think, right after the beginning of the trial.

Q. You have known Mr. Bliss about as long as you have known Mr. Matthews, haven't you?

A. Not exactly.

Q. About as long?

A. No, I wouldn't say that. I have been talking to Mr. Matthews a couple of weeks before I meet Mr. Bliss. I think

I met Mr. Bliss here in the court. I don't know for sure if I meet him over in the attorney's room, I couldn't really say—oh, he did come over a couple of times later on, yes.

Q. Didn't he see you up in the county jail several times?

A. Yes, he come over a couple of times.

Q. You talked with him?

A. Two or three times.

Q. A number of times, didn't you?

A. Yes.

Q. Talked with him up in the county jail, didn't you?

A. Not in the county jail, in the attorney's room. Nobody come down to see me in jail.

Q. When you talked with Mr. Bliss in the attorney's room, Mr. Matthews was there, isn't that right?

A. Yes, always was there.

Q. Now, the afternoon the three of you were in the prisoners room, that is the 20th—you know, the day I am talking [fol. 1215] about, don't you?

A. Yes.

Q. Just the three of you there?

A. I think there was only me and Mr. Cuff and Mr. Bliss.

Q. Did Mr. Cuff say anything about your taking the witness stand?

A. Not a word was said about that. I was so surprised because I thought before they should decide anything like that they should ask me whether I wanted it or not from the stand.

Q. Didn't Mr. Cuff tell you that if you took the witness stand you would be questioned?

A. There was nothing mentioned about the stand at all, with the stand at all.

Q. Did this talk take just about a minute?

A. I didn't get you. What do you mean by that?

Q. Well, you only talked with these two men for about a minute, is that right?

A. Nobody say anything about a minute.

Q. How long did you talk with Mr. Cuff and Mr. Bliss?

A. I couldn't say how long it was. I couldn't say how long it takes, because I was so nervous when I found out Al Matthews is not with me no more.

Q. Did you ask for Mr. Matthews?

A. Mr. Bliss asked Mr. Cuff, "Should I call Al Matthews?" and Mr. Cuff said, "No, I don't need him," or "I [fol. 1216] don't—" or "We don't need him," something like that. I don't—

Q. Well, did you tell Mr. Cuff that you wanted Al in there?

A. No, they keep right on talking and they said, "I tell you what we going to do," about waiving the jury, or let Judge Fricke decide it; and I said, "I don't know anything about waiving the jury," and I said, "It is all new to me." I was nervous anyhow, I didn't hardly give any attention to the whole thing because I was lost when I didn't see Al with me.

Q. Where was Mr. Matthews when you came out of the prisoners room, do you remember?

A. I think Mr. Matthews was on the table.

Q. How at where Mr. Gray is sitting, is that right?

A. Yes, right in the corner there, yes.

Q. Where did you sit?

A. I was sitting in the second chair. Mr. Hill was sitting in the third chair from Mr. Alexander.

Q. Which chair did you sit in, this one or this one?

A. No—wait a minute—

Q. You sat right here, didn't you?

A. Just a minute. No, I think it was Mr. Cuff was sitting there.

Q. And where were you, in this chair?

A. I think it was in that chair.

The Court: Mr. Ströble, do you remember whether or [fol. 1217] not Mr. Cuff was sitting right next to you?

The Witness: He was sitting next to me. He was sitting right next to me, yes. One side was Mr. Hill and one side was Mr. Cuff, and I was sitting in between. Mr. Al was sitting where Mr. Gray is.

The Court: Pardon me, just a minute. Let me get that once more, that last.

(Last answer read by the reporter.)

The Court: Mr. Al?

The Witness: I always call short, you know.

The Court: That is all right.

Q. By Mr. Henderson: Did you say anything to Al when you came out into the court room and sat down at the lawyers' table?

A. No, I didn't say a word.

Q. Did Al say anything to you?

A. He didn't say nothing at all.

Q. Do you remember when Mr. Hill told the Judge that you were going to waive the jury?

A. Mr. Cuff was—when we came in, Mr. Cuff was talking to Mr. Hill. He said something about waiving the jury. I couldn't really say, I was so nervous I couldn't even listen to what really the conversation was across the table. He was talking to Mr. Hill and Mr. Hill was talking to Judge Fricke; and then he was talking, of course, that they were—across the table to Mr. Cuff.

[fol. 1218] There was a conversation in between and it didn't take very long. I saw the jury disappear. I was so nervous about it, I didn't know why the jury should go away, it was something new to me, because I thought the jurors should stick to the counsel until the last minute.

Q. Did you ask Al where the jury was?

A. I didn't speak to Al. Al didn't talk to me.

Q. Did you ask Mr. Hill where the jury was?

A. No, they keep on talking. In the meantime—you or Mr. Alexander give some paper to Judge Fricke and Judge Fricke started in reading and I couldn't concentrate that day. I couldn't listen to what Judge Fricke was reading about.

Q. Do you remember when Mr. Hill got up and said to the Judge, "We are going to waive the jury," or something along that line?

A. He said—when they had the conversation, Mr. Cuff and Mr. Hill, about waiving the jury, how they start out, you know—and they didn't get—I couldn't really say what really the finish was. Anyhow, they succeed to—

Q. Well, now, didn't Mr. Hill stand up and say something to the Judge about waiving the jury?

A. He said something about waiving the jury.

Q. Did Mr. Hill ask you a question?

A. Well, he said, "Is it all right?" or something like that—I didn't even know.

[fol. 1219] Q. What did you say?

A. I said, "Yes." I didn't even know I did say "Yes," because I was too nervous when I didn't see Al was alongside of me to protect me, I was lost.

Q. How many times did you say it was all right with you?

A. Oh, I said here, and I said once in here, what I remember I said "Yes," but I didn't know what I was saying, because I didn't even know what I was saying, because I didn't even know what I mean, waiving the jury. Even asking Mr. Bliss, I say, "What does that mean?" and Mr. Cuff said, "Explain it to him."

Q. When you were up in the jail, didn't any of your fellow prisoners tell you you could be tried by the jury or by the Judge?

Mr. Gray: I will object, outside the scope of the direct examination.

The Court: Overruled—directly responsive to his statement he doesn't know what is meant by the expression to waive the jury trial.

The Witness: I didn't talk to any prisoner over there, nobody *dasn't* talk to anybody.

By Mr. Henderson:

Q. Didn't fellows sit around up there in the jail and talk among themselves—

A. Well—

Q. —as to whether they were going to have a jury trial, or Judge trial?

[fol. 1220] A. I am all by myself and one or two policemen there, what they call a guard there, they watch me whatever I do day and night for 24 hours. I *dasn't* talk to anybody.

Q. At any rate, you never heard any of the fellows up there talking about whether they are going to have a Judge trial or jury trial?

A. I don't hear nothing. No, just fellows playing cards way over at the other end. Nobody—the red line, you know,

they have got to stay away from there. If they did say something I couldn't hear it anyway, it was so far away.

Q. Did Mr. Cuff tell you where Al was going on his vacation?

A. He didn't say nothing of the kind.

Q. Did anybody come into the room while you three men were in there talking?

A. Not what I know.

Q. Do you have any idea how long you were in there talking with Mr. Cuff and Mr. Bliss?

A. I don't know how long that would take, just what we have been talking about here, I couldn't say how long that would take.

Q. Was there any talk about playing with other little girls or molesting other children?

A. Mr. Cuff said, because I asked, "Which way the best way?" when he said about waiving the jury and let Judge Fricke decide; then he said—he kind of gave me idea what [fol. 1221] would be the best thing, if I would decide let Judge Fricke decide it. He said if I ordered the jury and let them decide, well, there would be something coming up that wouldn't be of no benefit to me, or would make it worse, because there would be lots of things coming up, and the jurors kind of mad at me anyway, he said, "kind of mad at you anyway, why, you wouldn't benefit by it—" just like that.

Q. Mr. Cuff did tell you that the jury was kind of mad at you, is that right?

A. Mr. Cuff said jurors mad at me.

Q. What did you say about it?

A. I couldn't say nothing, I just listened.

Q. Did you say, "I am pretty sure that jury doesn't like me," or something like that?

A. I couldn't say that, it is up to the jury what they decide, I don't know. First I ever been in court, I don't know how things should be done, I don't know.

Q. At that time, did you understand what the jury's verdict had been?

A. I was found guilty, I know that.

Q. Found guilty of what?

A. First degree murder.

Q. What was the punishment to be?

A. I don't know.

Q. Don't you know now what the punishment is?

A. I don't know yet. Maybe I be sent up. It is supposed to be today, I supposed to be sentenced.

Q. The jury's verdict was what, as far as punishment is concerned?

A. First degree murder.

Q. Death or life?

A. I don't know what they call for first degree murder, might be life or death sentence, I don't know.

Q. And you don't know what the jury's verdict was in reference to death or life, is that right?

A. No, I don't know, I couldn't really say, I don't even know now.

Q. Did you read any newspapers after the jury brought the verdict in?

Mr. Gray: I will object on the ground it is outside the scope of the direct examination, your Honor.

The Court: I think the area has been opened up so wide that I think the question is proper, in view of the fact that the repeated matters appear in the public press, I think the question is a proper one. Overruled.

Mr. Gray: As to this line of questioning, may I enter a running objection, your Honor?

The Court: Yes.

Q. By Mr. Henderson: Mr. Stroble, after the time the jury came into this room and returned the verdict, didn't you read in the newspapers that they had convicted you to death?

[fol. 1223] A. I didn't want to see a paper.

Q. Well, did you see that in the newspaper?

A. No, I didn't.

Q. Did any of the fellows up in the jail tell you the jury had fixed the penalty of death?

A. I just told you before, I dassn't talk to nobody or nobody can talk to me. There is a red line there and they are keeping away; as soon as they get close to it I told them, I say, "Stay off the red line."

The Court: Did you talk to any of the newspaper reporters?

The Witness: No, not of that kind. They asked me how I feel, or something like that.

Q. By Mr. Henderson: Didn't some newspaper reporter ask you in the prisoners' room, "Are you afraid to die, Fred?" after they brought the verdict in?

A. They said lots of things in there, but I don't know, I was shaky, and I don't really recall what they did say. One fellow did ask me, he said, "Are you afraid to die?" I didn't know what they mean by that. Then I said, "Well, who wants to die that way, like this?" "Everybody have to die sooner or later," I told them, that was my answer.

Q. What did you mean by that?

Mr. Gray: I will object on the ground it is outside the scope of the direct.

The Court: I think we are getting a little far afield. [fol. 1224)] Sustained.

By Mr. Henderson

Q. Well, then, Mr. Stroble, at the time you talked with Mr. Bliss and Mr. Cuff about the insanity plea, you didn't know that the jury had fixed your penalty at death, is that right?

A. Well, I don't know. The jury could do it or—they found me guilty of first degree murder, that is what I heard.

Q. None of your lawyers told you the jury had fixed the penalty at death?

A. No, they never talked about that.

Q. As a matter of fact, Mr. Matthews told you in the presence of the newspaper fellows, didn't he, that you would never go to the gas chamber?

A. No, they didn't say that.

Mr. Gray: I will object on the ground it is outside the scope of the direct again, your Honor.

The Court: Well, I don't think it is of any great assistance to the Court either. The record shows the defendant was here in the court room, he was here throughout the course of the trial, he was here throughout the questioning of the

jurors with reference to the penalty, here when the jury were informed repeatedly and at very considerable length that it was their duty if they returned a first degree verdict to fix the penalty. The matter was argued, presented in the argument. In the absence of some showing that this defendant was wholly unable to comprehend that, I must [fol. 1225] conclude he must have known that the jury had the function of fixing the death penalty and that they had so fixed it by the verdict.

By Mr. Henderson:

Q. Mr. Cuff talked with you about the Judge and the jury, didn't he?

A. Mr. Cuff said, "Which way you want it? You want the jury decide it, or you want the jury—we waive the jury—or you want Judge Fricke decide it if you are insane or you are not insane?"

The Court: Well, if when they came out in the court room here, supposing they had asked you this question, just this question, "Do you want to be tried without a jury?" Would you have understood?

The Witness: I would understand that, yes.

The Court: Well, that was the question that was asked.

Mr. Henderson: We have no further questions, your Honor.

Mr. Gray: I have no further questions, your Honor.

The Court: Is there anything further on this question, gentlemen?

Mr. Gray: There will be no further oral testimony on the part of the defendant, your Honor.

The Court: Do you want to argue the matter?

Mr. Gray: If your Honor please, I have already stated my objection. Your Honor has had the opportunity now to hear the testimony of all the witnesses in connection with that, with the conversation that took place in the prisoners [fol. 1226] room. I only wish to point out further that from the statement made by Mr. Cuff, Mr. Matthews was not informed of this decision regarding a waiver of the jury trial, of the sanity aspect of this case, until such time as Mr. Hill got to his feet and commenced his statement.

The Court: I don't know whether that is so. The record is purely——

Mr. Gray: That is Mr. Cuff's testimony.

Mr. Henderson: No, it isn't.

The Court: He couldn't possibly know what Mr. Matthews had in mind.

Mr. Gray: I say that he had not communicated that decision to Mr. Matthews at that time. Now the statement of Mr. Hill, I think from the very face of the statement, shows that he had not talked with the defendant concerning this waiver.

The Court: I think the record shows that.

Mr. Gray: Yes, your Honor. Now, it is the position of the defendant that Mr. Cuff was not the defendant's counsel. It is the position of the defendant that Mr. Cuff was not in a position to give this defendant the benefit of his presence at the trial during the entire trial, so that he could then form his intelligent and discriminating opinion as to the value of waiving or keeping the jury; and for that reason I feel on behalf of the defendant that it appears that the defendant was not advised by a competent counsel, in so far as this particular case is concerned.

[fol. 1227] That is all the argument I have in support of that particular aspect, Subdivision 6, your Honor.

The Court: We have the testimony as it was given as a whole, and that is that Mr. Cuff was kept informed throughout the course of the trial what the proceedings were, what the testimony was, and that there were continuous, almost virtually daily conferences between himself and Mr. Matthews and Mr. Hill, the latter of who was trying the case.

It does appear he was thoroughly familiar with the psychiatric reports; in addition to the three psychiatrists appointed by the Court, we had Dr. Crahan and Dr. Frostig, he was familiar with those reports. He was aware that all of the psychiatrists, including the psychiatrists for the defense, agreed that the defendant was sane; in other words, necessarily Mr. Cuff realized, as was quite evident from the record here, there was absolutely nothing to sustain the insanity defense so far as expert testimony was concerned.

So far as the testimony at the trial, as to the circum-

stances surrounding the offense, of course those are reflected almost entirely by the defendant's statement as made to the District Attorney when he went into detail. Having tried a large number of these insanity defense cases over a period of time, Mr. Cuff was able to realize that it was so obvious that there was nothing which could be offered to support an insanity defense—he was also aware of the fact that the presumption of sanity (and I think Mr. [fol. 1228] Cuff is to be very much commended, although I think it was wholly unnecessary with all his experience, to take into consultation Judge Neeley, who to the Court's knowledge, has tried a great many of these cases, was over twenty years in the Public Defender's office, and who has unusual ability and good judgment)—however, we have another situation here, and that is the defendant in his very last question stated that he did understand the phrase "try the case without a jury", and that is what Mr. Hill said, and twice the defendant stated it. There is also a radical difference in—conflict in the testimony of Mr. Cuff and Mr. Bliss on one side, and the defendant on the other. I don't accept the statement of the defendant. I believe the testimony as given by Mr. Cuff and by Mr. Bliss.

Mr. Gray: Now, if your Honor please—

The Court: So that so far as this particular ground of motion, assuming it is a ground of motion, for a new trial, which I don't believe—assuming, without deciding that it is—the motion for new trial on that ground is denied. Treating the motion as a motion to set aside the waiver of the jury trial, which is a motion that I am meeting for the first time, that motion is also denied.

Mr. Gray: Yes, your Honor, that motion is not before the Court at this time: I haven't made such a motion.

The Court: That hasn't been made, but I didn't want to leave anything open in the record.

[fol. 1229] (Intermission.)

The Court: That brings us down to the 7th division.

Mr. Gray: I hadn't completed the 6th division, your Honor.

The Court: All right, go ahead.

Mr. Gray: And in further support of the motion under

this subdivision, your Honor, I urge that your Honor's decision as to the sanity is contrary to law in that there was no waiver of cross examination by the defendant in connection with the psychiatric reports.

The Court: The best answer to that is that it was actually waived, because there was no request for any examination of the doctors; it was expressly stipulated that in lieu of the doctors being called here, there being a unanimity of decision, the reports of the doctors be considered as evidence, and as you probably recall that I stopped Mr. Hill as he was about to proceed and called attention to the fact that in addition to the reports that we have been talking about before, that that stipulation should also include the report of Dr. Frostig. And he stated then that he had intended to bring that in and show it to me. But waiver of cross examination is a waiver which counsel may make; furthermore, I don't see any basis upon which there could have been any cross examination of the experts, you could hardly impeach their own experts.

Mr. Gray: If your Honor please, I had not finished making [fol. 1230] my statement of the grounds. Your Honor, may I continue?

The Court: All right, you go ahead.

Mr. Gray: In connection with that, there was no waiver of cross examination by the defendant, in connection with the psychiatric report on which it was stipulated that the Court could base its decision, and that these reports were neither affidavits nor testimony.

Your Honor will recall, the reports of Doctors Frostig and Crahan were in letter form, was not sworn, and as a matter of fact, your Honor, I have the original of that report—I believe that was a copy that was introduced in the record—and as a result of this, the presentation of these reports does not even arise to the status of the case that is submitted on the transcripts; and under recent decision, and especially the case of *People vs. Wallen*—

The Court: I am familiar with the Wallen case; I am also familiar with the fact that that same identical Court has twice since reversed itself on a proposition and held that defendants can waive confrontation of witnesses.

Mr. Gray: If your Honor please, in support of my argu-

ment on this point, I wish to urge that the defendant has been denied the right of confrontation of witnesses by reason of the fact that there was no waiver of cross examination and no waiver appears from the record. Now, I cite the case of *People vs. O'Hara*, 1 Cal. Unreported, in support of the statement that the defendant in a capital [fol. 1231] case is not presumed to waive anything, and that a—

The Court: I think that is good, sound law; you don't have to go that far back. There is no presumption of waivers.

Mr. Gray: And that no waiver of cross examination appears in the record.

The Court: Have you concluded?

Mr. Gray: Yes, I have, your Honor.

The Court: Well, of course, the answer to the proposition is, if we strike out all of the evidence of the psychiatrists offered by way of their reports, which was stipulated to, and which I think would be a waiver, we will still have the fact that the defense offered absolutely no testimony in support of the plea of not guilty by reason of insanity; and under the law the presumption of sanity would have to prevail. The Court would have had to arrive at the same conclusion if there were no evidence before it at all. So, as to that particular ground, the motion is denied.

Mr. Gray: The record does not reveal that the Court inquired of the defendant's counsel whether the defendant knew the nature of the waiver or whether he had been advised by them.

The Court: That wouldn't be necessary. The only instance in which our Court has ever held that a defendant must personally make a waiver in the case of waiver of [fol. 1232] a jury trial; and perhaps that question wouldn't have been decided that way if it hadn't been an unfortunate set of facts in which the defendant was unable to speak English and couldn't understand what was going on in the court room. But a Court confronted with a similar situation has held that a jury could be waived even without the constitutional provision.

Mr. Gray: Well, if your Honor please, the defendant didn't have the mental capacity to understand the nature

of the waiver and what it meant, and a jury was waived, and he is deprived of his day in court.

The Court: Yes, but Mr. Stroble said he knew what was meant, if he would be asked whether he desired to try the case before the Court without a jury, and he understood that, and that was one of the things Mr. Hill asked him. I haven't the slightest doubt in my mind at all the defendant understood what was going on; furthermore, I think it was his desire and selection, as testified to by Mr. Cuff and Mr. Bliss—those gentlemen have no particular interest in this case, no occasion for being influenced one way or the other, and both of them have the highest possible reputation for truth, honesty and integrity.

Mr. Gray: Your Honor would then rule on it?

The Court: Well, as to that, so far as all grounds which have been argued up to the present time, as to all those, the motion for new trial is denied.

Mr. Gray: Now, in further support of the motion under [fol. 1233] Subdivision 6, I urge that the defendant was deprived of the presumption of innocence by the premature release by the District Attorney's office of the details of the confession; and in support of this, your Honor, I offer at this time the 10 Star Edition of the Daily News, dated Thursday, November 17, 1949; the Sunrise Edition of the Los Angeles Examiner of Friday, November 18, 1949; the Sunset Edition of the Los Angeles Evening Herald and Express, Thursday, November 17, 1949; and Pages 1 and 2 of the Los Angeles Times, Home Edition, Friday, November 18, 1949.

The Court: We will mark those exhibits double AA in one group.

Mr. Gray: Your Honor is no doubt familiar with the headlines and contents of those newspapers.

The Court: Well, the answer to the proposition is rather obvious; if you have finished the presentation of this question—the jurors were all thoroughly examined and all definitely stated that they would give to the defendant the benefit of the presumption of innocence. To say he was deprived of it because of a newspaper, or all newspapers—all newspapers have published matters concerning the case—is wholly untenable and wholly illogical. There is noth-

ing to show those jurors ever saw those papers or ever read those papers. They were fully examined so far as defense counsel desired as to any knowledge or information they might have of the case. They were instructed as to the [fol. 1234] doctrine of reasonable doubt, and there is one presumption that does apply here and it is presumed the jury followed the law. As a matter of fact, there was no defense offered to the murder charge here whatsoever. The only thing in the nature of a defense which was offered was the legal argument as to whether it was a murder of the first or of the second degree, and the argument upon the hypothesis of first degree murder, as to which of the two penalties should be imposed.

Mr. Gray: The presumption of innocence would apply to whether it was murder of the first degree or murder of the second degree, then, your Honor?

The Court: Certainly it does.

Mr. Gray: And that is the point to which I refer.

The Court: In other words, if there is a case of reasonable doubt as to the matter of the degree, it would be the duty of the jury to give the defendant the benefit of the doubt and convict him of the lesser degree and the jury was so specifically instructed. And I can see no reason for doubting the jurors having followed the instruction.

Mr. Gray: That is all I have on that point, your Honor.

The Court: So far as that point is concerned, on that point also the motion for a new trial will be denied.

Mr. Gray: Now, if your Honor please, this I urge on behalf of the defendant, that the defendant has been deprived of his right to counsel, then and now, and in support of that statement I invite your Honor's attention to my [fol. 1235] affidavit. I have no wish to continue the argument concerning the portion of the record which has not been made available to me. Your Honor is well aware of my position in that regard. I am prepared and will argue it at length if your Honor feels that it would be beneficial at this time.

The Court: I can't see the argument here that the defendant was deprived of counsel. I am familiar with the entire record, familiar with the entire proceedings, and familiar with what transpired during the course of the trial. I think,

however, the statement that Mr. Matthews was the only person acting in defense of the defendant is a slight exaggeration, to say the least, especially in the light of your compliment of Mr. Hill, his very able argument to the jury.

Mr. Gray: Your Honor, in that statement in my affidavit I refer to the morning session of this court.

The Court: The affidavit doesn't limit itself to that, and that is the difficulty, that is, so far as your first statement is concerned.

Mr. Gray: If your Honor please, that affidavit is limited to the sanity aspect of the trial, as I think will appear.

The Court: May I read your affidavit?

Mr. Gray: Yes, sir.

The Court: "That the said defendant throughout said murder trial proceeding was old and feeble in mind and body, helpless and penniless, and except for the devotion of [fol. 1236] said Al Matthews, defendant was friendless, and said Al Matthews was the only person acting in his defense—" And that is coupled right in the clause, "throughout the said murder proceedings." I am willing to interpret it as you have it, that the entire affidavit is limited to the entire incident on January 20th.

Mr. Gray: That is my intention and that was intended to be contained in that language.

The Court: As far as that is concerned, the Court cannot agree with you that this defendant was not represented by counsel. Mr. Hill, counsel throughout the entire trial, represented him in the court proceedings on the afternoon of the 20th, and Mr. Matthews was at the counsel table; and while he didn't actively participate, he was still there. You have the same situation that when Mr. Hill, for example, would question a witness or question a juror, Mr. Matthews wasn't acting. It rarely happens that we allow two counsel to talk at the same time.

Mr. Gray: Yes, your Honor, but Mr. Hill was present during most of those times. The point to which I refer is that Mr. Hill was absent that morning and that at that time Mr. Matthews proceeded to trial on the sanity aspect of this case without the presence of Mr. Hill. So at that time, and as your Honor has pointed out in the record, Mr. Mat-

thews was the counsel for this defendant, employing that term in its legal sense, importing that Mr. Matthews was [fol. 1237] counsel and had full authority to do everything necessary to protect the rights of this defendant.

The Court: He was the only counsel representing the defendant.

Mr. Gray: And that he was the only counsel present.

The Court: So far as the proceedings which occurred in the morning was concerned, which was limited to the one proposition of a request to examine the juror on voir dire—I think the record shows that.

Mr. Gray: Whatever proceedings occurred in chambers—

The Court: There were no proceedings—may I say, there were no proceedings in chambers. The Court proceedings are conducted in the court room. No step was taken in the trial of the case except what took place in the court room.

I may state this, that when Mr. Matthews requested the opportunity of making a more detailed offer of proof, he stepped up to the bench, somewhat to the left of the Court originally, and started to make an offer of proof. Instead of keeping his voice down, he spoke so loudly that I believe his voice could be heard throughout the court room. He was admonished that he was talking too loudly and to modulate his voice, and then he stepped over more nearly directly in front of the Court and still continued to talk so loudly that, with the jury present in the box, I felt the offer of proof should not be made in their presence, particularly in view of the fact that it was a [fol. 1238] matter that I have referred to which had been gone all over about ten days or two weeks before, and all those matters had been known previously to Mr. Matthews; and furthermore, with all the matters that were there, the entire proceedings did not tend in the slightest to reflect upon the integrity of that juror. The basic discussion in chambers, however, related to a separate matter which was collateral and not connected with the trial at all.

Mr. Gray: Now, in my affidavit, your Honor, I have attempted to point out why I consider this material to the rights of the defendant, and I should like at this time to point out that at that time in the morning I was present

in court. I saw Mr. Matthews proceed to trial before the jury, attempt to interrogate the foreman of the jury, Mr. Kalbfuss, your Honor, and Mr. Alexander stated that you wanted Ellery Cuff present. Thereupon proceedings were recessed and offer of proof was completed in chambers. The hearing or proceeding or conference in chambers occupied approximately an hour and a half. There was a record made, as your Honor has stated. After the proceedings were again convened in the court, the case was continued over until 2:00 o'clock.

The Court: Yes. I think, however, that you are placing an interpretation upon the transcript, which is contrary to the actual fact. The recess to the Court's chambers was to complete the offer of proof without it being broadcast. The first thing that was done after retiring in chambers was to [fol. 1239] complete the offer of proof. The word "Discussion," which appears on Line 5, Page 999, relates to a discussion of an entirely different matter. In so far as it is placed in the record, it is really not a part of the record in this case whatsoever. Mr. Matthews was present during that discussion, but there is nothing there been introduced to indicate, and the Court knows there is nothing which related to any matter which would affect the defendant or his trial.

Mr. Gray: I am just attempting, your Honor, to point out at this time why, in my opinion, I feel it is important for this defendant to know what went on in those proceedings, and in connection with that I should like to continue my argument of what happened at that time and why I, as his attorney, feel that by not having the transcript of these proceedings available to me, that I feel the defendant is placed in a position where he does not have a full and fair representation of counsel, and the circumstances surrounding this indicates to me the possibility or even a probability that he has not had a full and fair representation at that time. Now, if your Honor please, this was recessed until after lunch. At that time, Mr. Hill was present in court. A conference was had with the defendant, at which Mr. Matthews, his attorney, and Mr. Hill, his attorney, were not present. Mr. Cuff conferred with the defendant. The defendant then came out of the prisoners' room, waived the

jury; Mr. Matthews sat silent, although Mr. Cuff stated [fol. 1240] that he did not inform him that there was going to be any waiver of the jury. The only conclusion, in all fairness, that I can draw, and in order to protect this defendant's rights, is that something occurred in chambers to coerce Mr. Matthews into remaining silent at the time of the waiver of the jury.

The Court: That is pure speculation on your part. Mr. Matthews hasn't made any such statement that anything occurred there, and there hasn't been any proof offered to the effect. In other words, purely a matter of speculation without any proof that any such thing happened, and I know nothing of that sort did happen.

Mr. Gray: Well, may I pass on to my next point, your Honor?

The Court: Yes.

Mr. Gray: Your Honor denies the motion as to that?

Motion for a New Trial or the Alleged Motion Setting Aside the Waiver of a Jury Trial Are Denied

The Court: Well, that appears to be just a renewal of the same point—further argument on the same point. So far as any matter thus far presented in support of the motion for a new trial, or the alleged motion of setting aside the waiver of a jury trial are concerned, motions up to the present time are denied.

(Intermission.)

The Court: All right, Mr. Gray.

Mr. Gray: Further, under Subdivision 6, your Honor, the Court through inadvertence erred by stating that all [fol. 1241] of the psychiatrists and psychologists had found the defendant sane at the time of the commission of the crime, in that in reports of Doctors Crahan and Frostig and Parkin there is no such statement.

The Court: You mean there is no such statement in Dr. Parkin's report?

Mr. Gray: Yes, your Honor.

The Court: I am not going to bother going into all of them, but we will take Dr. Parkin's report because he was one of the court psychiatrists.

(Examining documents.)

The Court: I just caught the report of Dr. Frostig—

Mr. Alexander: Your Honor will find on Page 1040 of the transcript, bottom of Page 1039 of the transcript and top of Page 1040, that is the very end of his report, your Honor.

The Court: That refers to sanity at the time of the proceeding, but his entire report as a whole indicates sanity and refrains absolutely from any diagnosis of any psychosis or insanity; in other words—

Mr. Gray: By implication, then, your Honor finds—

The Court: I hope counsel will pardon me, I am not trying to be egotistical, but for a great many years I have made a study of mental and nervous diseases, handled hundreds of cases in which the situation is involved, and in reading the report of a medical-legal expert I am able to [fol. 1242] understand his language, although it is written in 39-cent words—May I refer to Dr. Parkin's report, the last line in his report, "Diagnosis: Sane."

And may I say that there again we have to get into interpretations, understanding as to what the Doctor means, which isn't expressed there. Dr. Parkin has been testifying in and about these courts here in Los Angeles County as far back, to my knowledge, as 1918. He is thoroughly familiar with the requirements of a court-appointed expert or of an expert called to testify in a matter of psychiatry. I think he is as familiar with the law of insanity, so far as the measure of sanity or insanity is concerned, as any of the lawyers are; so that the report of Dr. Parkin is that he is sane. But if we wanted to question that again, the Doctor specifically says he is to be considered legally sane and responsible for his behavior. I don't see how the Doctor could make that any stronger. So far as that point is concerned, the motion for new trial is denied.

Mr. Gray: Now, your Honor, at this time I wish to make—I have completed my argument on all of the grounds upon which the defendant seeks a new trial—and I wish to move at this time to arrest the judgment in this case on the ground that the Court had no jurisdiction to try the case, in that the proceedings on which the information is based are in violation of the U. S. Constitution, in that the defendant was

denied the right of counsel at the time of the taking of his [fol. 1243] confession, although counsel was present and attempted to represent him and advise him of his constitutional rights; and that the defendant was not advised of his constitutional rights at that time; and his right to be taken before a magistrate speedily after the complaint was issued in the Municipal Court was abridged; and in furtherance of this motion, your Honor, I should like to incorporate all of the grounds that were made in the motion under 995, and ask your Honor to consider them.

The Court: I have that matter fully in mind. The Court's jurisdiction does not depend upon the preliminary examination at all. The Court has jurisdiction when the defendant is in court, enters a plea, and the offense as charged in the indictment or information shows an offense committed in the jurisdiction of the Court in which the Court has trial jurisdiction. The failure to immediately arraign the defendant might be available by way of habeas corpus, but then only for the purpose of bringing the defendant into the court room for the purpose of arraignment, which couldn't possibly be accomplished in less than twenty-four hours—and as I recall it, the defendant was in court within twenty-four hours.

Mr. Gray: I am just asking your Honor to consider the grounds raised in the motion under 995 as given in support of this motion at this time.

The Court: Yes, I have those entirely in mind.

[fol. 1244] Mr. Gray: Yes, your Honor. Now, in furtherance of this motion, I again wish to urge that the defendant has been denied his right to counsel, and under—in support of the motion on this ground, under this particular motion I would like your Honor to consider the argument given under the motion for a new trial.

The Court: Well, frankly, I don't think the defendant was denied the right of counsel. I think he had counsel at all stages of the proceedings. We have gotten ourselves rather into a little bit of confusion here. Do I understand that you had absolutely concluded all arguments on the motion for new trial?

Mr. Gray: Yes, your Honor.

Motion for New Trial Denied

Now we have the motion in arrest of judgment.

Motion in Arrest of Judgment and to Dismiss Denied

Mr. Gray: That is right, I have presented everything under motion for arrest of judgment, and I now move to dismiss the proceedings on the grounds that the Court lacks jurisdiction; and in support of this motion I urge all of the objections that were raised under the motion under 995, and on all other constitutional grounds, both State and Federal, which appears from the record; and I ask the Court at this time to consider at this time all the testimony given at the hearing of the motion under 995 as given in support of this motion at this time.

The Court: We will dispose of the motion for arrest of [fol. 1245] judgment. First, the motion in arrest of judgment is denied. The motion to dismiss is denied upon its merits, although it can also be denied upon the ground no such motion is known to our criminal procedure. In other words, all motions up to the present time which have been made are denied.

Mr. Gray: And in further support of this motion, your Honor, I urge that the Court has no jurisdiction, for the reason that these proceedings are based upon an information and not on an indictment, and in a felony case where the punishment may be death, this is in violation of the United States Constitution.

The Court: That point has been passed upon so frequently it is practically never heard any more. However, assuming that that is a further ground for motion to set aside, or in support of the motion for new trial, the motions are again all denied.

Is there any further legal cause why sentence should not now be pronounced?

Mr. Gray: No, your Honor.

Judgment and Sentence

The Court: Fred Stroble, you were heretofore arraigned under Information 130,013, charging you with the crime of Murder, specifically the Murder on about November 14, 1949, of Linda Joyce Glucoft; thereafter, upon arraignment, you

made a motion under Section 995 to set aside the Information, which was denied; and you then entered pleas of not guilty, and not guilty by reason of insanity. The trial was [fol. 1246] then set for January 3, 1950, upon which date the trial of the issues under your plea of not guilty was begun; and on January 19, 1950, the jury returned a verdict finding you guilty of Murder, fixing the Murder as Murder of the first degree, without any recommendation as to penalty; in other words, the jury returned a verdict fixing the penalty at death. Thereafter, trial by jury as to the issue of not guilty by reason of insanity was waived by the defendant in person, and by counsel for both sides in person; and the matter was submitted to the Court; and the Court found the defendant sane at the time of the commission of the offense charged. Thereafter, the matter of judgment and sentence was set down for January 27, and again continued to January 30, to February 1, and to this date.

There being no legal cause, it is the judgment and sentence of this Court that for the crime of Murder in the first degree, of which you, the said Fred Stroble, have been convicted by verdict of the jury, and trial by the Court, carrying with it the extreme penalty of the law, that you, the said Fred Stroble, be delivered by the Sheriff of Los Angeles County to the Warden of the State Prison of the State of California at San Quentin, to be by him executed and put to death by the administration of lethal gas in the manner provided by the laws of the State of California. The Sheriff is directed to deliver you, the said Fred Stroble, to [fols. 1247-1251] the Warden of the State Prison at San Quentin within ten days from this date, to be held by said Warden pending the decision of this case on appeal.

We will take a recess until 2:00 o'clock.

(End of Court Proceedings.)

[fol. 1252] IN SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

(Title omitted)

Reporter's Transcript of Proceedings to Augment

Transcript on Appeal

[fol. 1253] (Reporter's Note: The jury in the within matter having been duly admonished and a recess taken as noted at Page 996 of the Reporters' Transcript on Appeal, the Official Reporter after a lapse of some minutes was summoned into chambers by the Clerk; in chambers assembled were Judge Charles W. Fricke, and Messrs. Adolph Alexander, Fred Henderson, S. Ernest Roll, Ellery E. Cuff, Everett P. Davis, and Ed Bliss; Mr. Bliss was asked by the Court to request Mr. Al Matthews' presence in chambers, and Mr. Matthews appeared; and that part of the discussion between the parties present which was reported is transcribed as follows:)

Mr. Alexander: May the record show, Judge, that these proceedings are in chambers and not in the presence of the jury?

The Court: I want the record to show something further than that . . . that following the express desire of the representative of the public defender's office for a voir dire examination of the juror—which the Court would not permit, because it has been held by our Supreme Court to be improper and not permissible—Mr. Matthews requested that he be allowed to make an offer of proof. I hadn't [fol. 1254] the slightest idea of what he had in mind at the time, I couldn't conceive of any possible situation which would overcome a decision of the Supreme Court as to the voir dire. Mr. Matthews came up to the bench. The jury was still in the courtroom. Mr. Matthews spoke so loud that he could be heard all over the inner part of the courtroom, and was cautioned—

Mr. Matthews: May the record show that Al Matthews—

The Court: Will you please keep quiet, Mr. Matthews, until I get through.

—that he was admonished by Mr. Alexander of the District Attorney's office he was talking too loud. He came around on the other side of the reporter, and his voice still was so loud that the court believed that what he was saying would be audible in the whole, or in part to the jury; for which reason the court excused the jury and had them retire to the jury room so that any statements which would be in connection with this proceeding would not be heard by the press—there being a large number of newspaper men in the courtroom—the court adjourned court, and is now holding court in its chambers.

Mr. Matthews: I renew the offer of proof, your Honor.

The Court: I would like to have the record also show that at the court's request and desire Mr. Ellery Cuff, the public defender of Los Angeles County, Mr. Ernest Roll, chief deputy of the district attorney's office, are present; [fol. 1255] in addition to counsel also Mr. Everett Davis, the investigator for the district attorney's office, Mr. Ed Bliss, investigator for the public defender's office. At this point, I think that the offer of proof as thus far made I would like to have read back by the reporter for Mr. Cuff's information.

(Record read as requested.)

The Court: You may go ahead with the offer.

Mr. Matthews: We ask at this time that the voir dire examination of Mr. Kalbfuss as a juror be incorporated in our offer of proof; that as to Eddie Molen, if Eddie Molen was called he would testify that he saw the juror, Mr. Kalbfuss in the Los Angeles Times Building—I can't think of the date—on Saturday, January 7, I believe that is right—that at that time he had a newspaper under his arm, that the newspaper was the newspaper of the Thursday edition of the Los Angeles Times, that its headline substantially was "Jurors Weep as Stroble Trial Begins". That is the end of the offer.

Mr. Cuff: That is . . . ?

Mr. Matthews: That is all, Mr. Cuff.

Mr. Cuff: In regard to information—I will read this report, I think it contains essentially everything, every step. We have one part here that it is requested we keep it con-

fidential, because it involved an officer, and I do not see where in any way it has anything to do with the inquiry [fol. 1256] here.

The Court: You can do that, Mr. Cuff. We will all be interested in the ultimate facts.

Mr. Cuff: This is a report made by an investigator of our office, Mr. Ed Bliss, on the 12th of January of this year.

The Court: I would like one thing straightened out, Mr. Cuff, which I think could be very easily done: that the matters contained in the offer of proof by Mr. Matthews were called to the court's attention, and called to your attention, and we had a conference in my chambers at the time; that thereafter investigation was had by Mr. Bliss, the investigator of your office, and Mr. Davis for the district attorney's office; and the result of that communicated to the court and to you; and there is nothing in the offer of proof which wasn't known to you and to Mr. Matthews at that time. Am I correct in that?

Mr. Cuff: That is right. I will read our report in regard to this . . . (quoting) At the office. Was contacted by a man who represented himself as Edward Roberts, stating he was telephoning from MADISON 9911, who claimed he had information that one of the jurors in the above case was an employee of the Los Angeles Times, and had falsified information in getting on the jury, and that he had expressed an opinion that he was for the conviction of the above defendant. Turned this over to Mr. Matthews, who then [fol. 1257] carried on a conversation with this party. Contact was again established with this party at MADISON 9905. This number was traced and found to be a pay station in the lobby of the Los Angeles Times Building. At the direction of Mr. Cuff and Mr. Matthews, attempted to contact Everett Davis, assistant chief investigator of the district attorney's office: was unable to do so. Finally contacted deputy district attorney Alexander at the Los Angeles Police Academy. He stated that if Mr. Cuff would listen in on the telephone when contact was again established with the above informant at 8:00 p. m., that Mr. Cuff's word as to the conversation would be taken without question. Contacted Mr. Cuff at his home and made arrangement to meet him at the home of Mr. Matthews in West Hollywood. At

the home of Mr. Matthews, with Mr. Cuff, contact was again established with the above informant telephoning Mr. Matthews. This conversation was witnessed by Mr. Cuff on an extension telephone. Through the conversation the number DUNKIRK 72678 was elicited. Through the telephone company, traced the above number to Edward Charles Molen, Mr., 953 Arapahoe, rear. At the direction of Mr. Cuff, contacted Mr. Lane and rendezvoused at Olympic and Alvarado. At 10:01 p. m., Lane and Bliss approached the above address, which is located in a trailer to the rear of 953. As we were approaching it, we observed another man also entering the above place. We remained under [fol. 1258] cover until the above man had entered the trailer, and then listened to their conversation as the informant Molen began to tell him about the juror. By previous arrangement, Mr. Matthews telephoned this number at 10:03 p. m. As soon as it was established it was Mr. Matthews on the telephone, we entered the trailer, showing our identification; and Bliss spoke to Matthews on the phone to identify the call. The other man in the trailer was identified as Sergeant G. L. Wooley, serial number 2276, Los Angeles Police Department, working out of Chief Thad Brown's office. Through interrogation it developed that the above Molen is a two-time loser out of Folsom who had been acting as informant on several big deals to the Los Angeles Police Department. It also developed that Molen had contacted Don Dwiggins, reporter for the Daily News, and given the story to him. In addition to this, he stated that he had contacted—he was contacted by Examiner reporters. He stated that on the afternoon of January 12th at about 12:15 p. m., he was in the chambers of Judge Fricke and gave him this information. The juror he mentioned is August B. Kalbfuse, K-a-l-b-f-u-s-e.

Mr. Bliss: No "e" on that.

The Court: I think it is a typographical error, that "e" ought to be stricken.

Mr. Alexander: Kalbfuss (spelling).

Mr. Cuff: (Continuing) At the present time, with the [fol. 1259] information he has, it is difficult to pin down any definite remarks by Mr. Kalbfuss; however, he stated that Kalbfuss has been carrying copies of the Times with

him, particularly the copy which had been printed on January 5; and that he was seen to have this copy in his possession on January 7th. This is the copy in the Times that had the picture of the jurors in the above case. And January 13, 1950, at the Los Angeles Times personnel division contacted Mrs. Douglas. According to their personnel records, August B. Kalbfuss was originally employed as a machinist on May 11, 1948; he is now a mailer in the Mirror mail room, and his classification is mailer. He is now on jury duty. The guard mentioned by Mr. Molen is apparently Lowell Lyons; the elevator operator mentioned is a girl named Dorothy.

Mr. Bliss: That completes that.

Mr. Cuff: That completes that report. Now, there was a subsequent contact of Dorothy, was there not, upon the part of you and Mr. Davis?

Mr. Alexander: Pardon me, Mr. Cuff, let the record show—what was the date you contacted me at the Academy?

Mr. Bliss: 12th of January.

Mr. Alexander: 12th of January. May the record show that on the morning of the 13th of January in the presence of Judge Fricke, Ellery Cuff, Al Matthews, Johnny Hill, of the public defender's office, Mr. Henderson and myself [fol. 1260] of the district attorney's office, this entire matter was disclosed to the Court; at which time it was agreed that in the interests of justice Mr. Ed Bliss of your office, jointly with Mr. Everett Davis of our office, would investigate the matter further and report the result of their investigation to the Court.

Mr. Cuff: That is right.

The Court: May I add there, also, that was entirely satisfactory and concurred in by the court, particularly in view of the fact that I have known both Mr. Davis and Mr. Bliss a great many years and have unqualified confidence in their integrity and the truthfulness of any matter that they would report to the court.

Mr. Cuff: Now, I think I will ask either Mr. Davis or Mr. Bliss to report their contact with Dorothy and what she said.

Mr. Alexander: Mr. Bliss, you made notes of that, did you not?

Mr. Bliss: I haven't got the notes; Mr. Davis and I made

the investigation together, and Mr. Davis can get it from here on, including the conversation.

Mr. Davis: Mr. Bliss and myself first contacted the starter, whose name I do not have, the starter in the Times-Mirror Building. We requested that we wished to talk to a Dorothy Schuck, or a Dorothy. In a few minutes, a young lady appeared and we went from there to the personnel [fol. 1261] office in the Times-Mirror Building, where we had a conversation with Dorothy Schuck. I think I have some record as to—I don't believe her exact address is necessary, but I have it if it is necessary. Whereupon we questioned her as to any conversation or any statements made by the juror referred to. She recognized the name and stated that she knew him. She said that positively at no time did he make any comments regarding the case. There may have been a mention made that he was a juror on the case by her, but no comments were made by the juror, one way or the other; simply, if he made any comment, it was. I cannot make any statements. We left it at that. I think the following day we then—

Mr. Bliss: That afternoon.

Mr. Davis: Or the late afternoon of that date we contacted Lowell Lyons, who is a guard in the Times Building. I questioned Lowell Lyons personally in the presence of Mr. Bliss. Lowell Lyons stated that several days prior to our talking to him that he had been contacted by a young man who had worked at one time for the Times-Mirror Building, for the Times-Mirror, and that he had told Lowell Lyons that he overheard a conversation between an elevator operator and the juror, wherein the juror was making remarks concerning the Stroble case. We obtained the name of that elevator operator and it was found to be a different operator. This girl worked in the main Times [fol. 1262] Building at the corner of First and Spring. But before we left Mr. Lyons I questioned Lyons very carefully as to whether or not he had any independent information outside of the statements made to him by this individual. He said that positively not, he had overheard no conversation. He had discussed this matter with no one, and the only information he had was what was told him by this young man that had previously worked for the

Times-Mirror whose name has been previously mentioned.
Mr. Cuff: Molen.

Mr. Davis: Mr. Bliss and I then proceeded to the Times Building where we contacted a young lady whose name had been given us by Lowell Lyons.—We proceeded to the top floor with this young lady, at which time we questioned her very carefully. The elevator was stopped, no one else was present except the young lady, Mr. Bliss and myself. She said that there had never been any statements made by the juror; that she asked him—made some remark, well, how are you getting along on the Stroble case; whereupon the reply from the juror was to the effect, I cannot comment, we have been strictly instructed to make no remarks; and that was all that was said.

Mr. Alexander: Now, may the record show that on the 13th of January in the presence of Hill, of the public defender's office, Mr. Matthews, and Mr. Cuff you were here then, too—

[fol. 1263] Mr. Cuff: I believe I was.

Mr. Alexander: In the presence of Mr. Henderson of our office, and myself, and Judge Fricke, Mr. Bliss of your office, and Mr. Davis of our office, communicated those facts to the Court in the presence of all those persons that I mentioned; that at that time comments were made by both the public defender's office and the district attorney's office, and I think in the record we should have the name of the man whose comments were placed in the record, Judge.

Mr. Cuff: I received the information as outlined by Mr. Davis from our investigator Mr. Bliss, almost identically as given by Mr. Davis. I made the statement to the Court that I thought that there was nothing to it, and that I thought the statement made by Mr. Kalbfuss would be the proper statement for a man that was honest and considering his oath seriously. That is about the only thing he could say under the circumstance where an outsider might ask him a question, and he gave an answer that was a very appropriate answer.

The Court: I think practically at that stage of the proceedings the court commented upon the fact that not only did the investigation disclose that there was no grounds for criticism of the juror, but he was to be most highly

commended for the very ethical standard, and his sincerity in following the court's instructions about in any way discussing anything connected with the case; and that he had [fol. 1264] really demonstrated that he was a very competent juror and everybody in the room agreed that that was so, that the matter had absolutely no merit in it at all.

Mr. Alexander: I think, Judge, we should have the record show that Mr. Matthews himself expressed his feelings along the same lines. Is that true, Mr. Matthews?

Mr. Matthews: I said that I thought Eddie Molen was a psychopath.

Mr. Alexander: And what did you say about the juror Kalbfuss, that he should or should not remain?

Mr. Matthews: As to the juror Kalbfuss, as I best remember it, I thought that his conduct as reported by Mr. Bliss and Mr. Davis was commendable. I do feel now, and I did feel then that I was misled by that man when he said he was a mechanic; when he said he was a mailer—if he had said he was a mailer to me, I would have inquired where he was a mailer. I think that was deliberate.

Mr. Alexander: Do you think the juror should remain at this time as a juror in this case?

The Court: The record speaks for itself. There has been a full, fair, and complete disclosure, not only to the Court but to all of counsel. Everybody at the time of that disclosure, everything that we know now was known then; everybody was satisfied the juror was qualified, that there was no objection to him and no objection was made; and the trial proceeded.

[fol. 1265] Mr. Alexander: I think the record should further show, Judge, that both the public defender's office and the district attorney's office at that time stated in chambers, and it was agreed that if there is any question at all about this juror's qualifications there would be no trouble in removing the juror, but that both sides would consent to do so.

The Court: That stipulation, however, Mr. Alexander, was commented upon by the Court as being a method which was probably most diplomatic for removing the juror from the jury panel, but it was left open because at that time we had not yet ascertained all the facts; the statement being

made that if there was any question at all in anybody's mind as to whether the juror should remain on the jury, the district attorney deputies agreed and the public defender's deputies agreed that they would stipulate, either one at the request of the other, that the juror could be withdrawn and an alternate substituted. There has never been at any time any request for any such stipulation, nor any objection made to the juror remaining in the trial. I would like to state further in the record that under the law voir dire of course is not permitted at this stage of the trial.

Mr. Alexander: Judge, I think we should inquire now for the purpose of the record have there been any new facts developed since that inquiry by Mr. Bliss and Mr. Davis? [fol. 1266] The Court: Does anybody know of any? If so, I would be very glad to hear of it. I would like to have counsel stipulate—if not, I can handle it directly—that the statements made by Mr. Davis and Mr. Bliss, and the report made by Mr. Bliss be stipulated that it may be considered as evidence, with the same effect as if it were made under oath?

Mr. Cuff: We will so stipulate. You agree to that, Mr. Matthews?

Mr. Matthews: Surely.

Mr. Henderson: So stipulated.

Mr. Cuff: May I add this: on Friday evening, I believe it was, after having received a report from Mr. Bliss, I called Judge Fricke on the telephone at his home. I believe it was, and advised him that in my opinion—and I think I spoke, in Mr. Matthew's opinion—at that time that we didn't find anything through the accusation of Molen at all that had any merit.

The Court: Well, I think you might add to that also that Mr. Bliss called me up and reported the results of his investigation generally, not going into detail, but indicating that there apparently was no merit. I would like to add this also, that in my conference with Mr. Molen I was extremely dubious as to his reliability; his entire manner strongly tended towards indicating that he was psychopathic, particularly in view of the fact that he very grandly [fol. 1267] eloquently upon leaving presented me with a copy of the forthcoming Sunday funny paper of the Times

which had just been off the press but was not yet on the street. I have also been informed that he is an ex-convict and considered himself somewhat of an undercover operator.

Mr. Cuff: The Court can take judicial knowledge, because Judge Fricke sentenced him to the penitentiary.

Mr. Matthews: And used as such undercover agent, used as such by the Los Angeles Police Department.

The Court: I think I was so informed.

Mr. Cuff: No doubt at all as to the unreliability of Molen, I do not place any credence in anything Mr. Molen has said. The only issue here is whether or not there was a proper disclosure made by the juror at the time.

Mr. Matthews: That is right.

The Court: I would like to clear up one other thing, that is with reference to the conference when I talked with Mr. Molen himself, he was wholly unable to give me any fractional part of the alleged conversation which he claimed to have overheard, other than he said the word "Stroble" was mentioned.

Mr. Cuff: I think that is all he heard. I wouldn't believe the man under any circumstances.

The Court: I don't believe he heard that.

Mr. Cuff: He may not have heard that. Our records disclosed that in 1937, I believe it was '36 or '37, we represented [fol. 1268] sent—I represented personally Mr. Molen. I don't remember exactly what happened, but I do remember that he came back into court at a subsequent date, about 1940; at that time he was brought before Judge Fricke in Department 43; and for the crime—I believe he was charged with 503 or burglary, I forget which, he was then sentenced to the penitentiary. We felt at that time that he was a psychopath. We found nothing to indicate a change in our view, so far as Molen is concerned, we still think he is psychopathic.

The Court: As I take it, the only question remaining at the present time is the contention that the man who is actually a machinist and who answered that he was a mechanic should also have disclosed that he was a mailer at the Mirror.

Mr. Matthews: Yes.

The Court: The court's answer to that proposition is

that counsel had full facilities to ask the juror at the time by whom he was employed, whether he had any other occupation, whether he was then actively engaged in being a machinist, and a number of very obvious questions, and didn't choose to do so—but I think the answer to the proposition basically is that everything that is known now was known before any verdict was arrived at; there was an offer to stipulate if there was any question as to the juror's remaining on the trial, the district attorney would agree to stipulate he might be excused; and the public defender did [fol. 1269] not avail himself of it.

Mr. Matthews: It is my understanding of the law that if a point is not raised in the trial in the court that it is waived by the defense attorney. I did not propose to waive this particular point.

The Court: Well, the difficulty is that you already waived it when you accepted the juror, knowing all the facts, and allowed him to continue to sit there.

Mr. Matthews: That is going to be a question for the Supreme Court.

The Court: It is not even a question which is going to bother the Supreme Court. I don't think there is any question about it. Furthermore, the Supreme Court has specifically ruled on your request that there is no right of voir dire examination after the jury has once been sworn in the case and they have made that ruling specifically in a case in which the insanity defense was offered, so the case is directly in point.

Mr. Davis: May I say something for the record, Judge? Going back to the subject matter which seems to have caused all this controversy, on Friday afternoon in the public defender's office, in the presence of Mr. Bliss I questioned this man Molen; and at that time I was under the impression that information originated from him as to whether or not during the time that he was in the elevator and overheard a conversation as he stated between this juror and the elevator operator; whether he could state one single solitary thing having to do with the testimony or any opinions offered by that juror to this girl; and he said positively not, not one thing, he merely overheard the fact mentioned that this subject was a juror and there was a laugh

or smile and that was the end of it. Now, I can—I would like to express an opinion off of the record—

The Court: Let's put it in the record.

Mr. Davis: All right. I have known Lowell Lyons for a good many years, and I am satisfied from the records that I have that any mention made of this case by this individual Molen to Lowell Lyons would come over to this office or the public defender's office triple-elaborated. He elaborates on everything that he talks about. We have had considerable trouble with Lowell Lyons in the past on the very situation that has developed right here.

Mr. Cuff: Yes.

The Court: I think we might add substantially the same thing was stated by Mr. Davis heretofore at the conference previously referred to when we were all here discussing what the witness had said and before Mr. Lowell Lyons was interviewed, the occasion being the one in which we first called in Mr. Bliss and Mr. Davis.

Mr. Bliss: Judge, if I may add a statement to clear up one—

The Court: Go ahead.

[fol. 1271] Mr. Bliss: In regard to everything Mr. Davis has stated, it is correct all the way through, everything that he has stated, and in addition to that the telephone call to you on Friday evening at the completion of Mr. Davis' and my investigation was at the request of Mr. Matthews whom we had contacted previously.

The Court: Now I would like to say something off the record.

(Off the record.)

The Court: Let the record show that the Court has just requested Mr. Ellery Cuff to attend upon the remainder of this trial for the purpose of assuring that the conduct of his deputy Mr. Al Matthews is in accordance with the rules of law and the ethics of the legal profession. Before this case started, so far as this Court was concerned everything seems to have proceeded regularly. The case was transferred into this department by Judge Robert Scott, who was then sitting in the master calendar, so that the pleas and any motions preliminary to plea, and all proceedings subsequent to the arraignment be had in this court. Upon the

arraignment of the defendant, defendant entered a plea of not guilty. Thereupon defense counsel, the public defender's office, Mr. Hill and Mr. Matthews, interposed a plea of not guilty by reason of insanity; and the court appointed Dr. Edwin McNeil, Dr. Wyers, the superintendent of Nor-[fol. 1272] walk State Hospital, and Dr. Victor Parkin; and the secretary of the Court was directed to write letters advising the doctors of their appointment. Those letters were written and mailed early the afternoon of the same day. That before the letters were received, Mr. Matthews called up Dr. McNeil, one of the court-appointed psychiatrists—

Mr. Matthews: I object to this, your Honor, on the grounds of hearsay.

The Court: I will overrule the objection, because you admitted the fact in my presence in this courtroom, in the presence of Mr. Cuff.

Mr. Matthews: I admitted what fact? Let's get the fact that I admitted.

The Court: That Mr. Matthews had called up Dr. McNeil.

Mr. Matthews: May the record show that I did that under the direction of Mr. Cuff, public defender.

The Court: I will let Mr. Cuff make his statement in the record when we get down to it. (Continuing:) Requested Dr. McNeil not to make any inquiry of the defendant Stroble relating to the facts and circumstances of the offense—

Mr. Matthews: Make a further objection on the grounds it is hearsay.

The Court: Overruled, upon the ground that it has been admitted by counsel, Mr. Matthews.

Mr. Matthews: I object to that and I deny that I ever made such a statement.

[fol. 1273] The Court: That he also requested Dr. McNeil to leave out of his report any statement which Mr. Stroble might make concerning any fact relative to the crime charged.

Mr. Matthews: I deny that statement.

The Court: Upon the court being apprised of that fact, I called the matter to the attention of the public defender's office. I first was unable to contact Mr. Cuff, but I contacted Mr. Hovden, his chief deputy: My conference with Mr. Hovden was quite unsatisfactory. Later in the morning,

Mr. Cuff appeared in my chambers. I called the matter to his attention, and he said he would follow it up. In the meantime I wrote a letter to each of the doctors and received a reply from Dr. McNeil that he had been so contacted by Mr. Matthews, and that Mr. Matthews had made such statements to him.

Mr. Matthews: May the record show that this court accepted Dr. McNeil's statement, gave me no kind of a hearing whatsoever, threatened to take me to the Los Angeles Bar Association—

The Court: I didn't threaten to—what I stated was I should do that, but out of consideration of the high regard in which the public defender's office was held by the public, and the unjust reaction which would result from such a proceeding—would injure wholly innocent parties—that I preferred not to do that. I will go a step further. I not [fol. 1274] only said I had the possibility of reporting the matter to the Bar Association, but also of reporting the matter to the Civil Service Commission. Thereafter, on the following day, we had a discussion in the Court's chambers in which Mr. Matthews and Mr. Cuff were present. In the Court's presence. Mr. Matthews admitted that he had been entirely wrong, that he had done something which he should not have done; that was done in Mr. Cuff's presence, and if I am not right I will permit Mr. Matthews or Mr. Cuff to contradict that.

Mr. Matthews: That is true, I said I made a mistake, of judgment; however, not having seen the McNeil letter, I don't know what is in it.

The Court: To refresh your memory, Mr. Matthews, I had the McNeil letter here at that time.

Mr. Matthews: I have never seen it in my life, your Honor.

(Court searches among papers for letter.)

The Court: I have found the letter. I think I showed you the letter, Mr. Cuff; I am not sure Mr. Matthews saw the letter or not, so I don't want to contradict him in that. At the time of discussing the question of the reports of the psychiatrist, this court determined that in fairness to the defendant and to prevent any disclosure of the reports to

the press or any persons other than the immediate counsel concerning the trial, the Court decided and announced, in [fol. 1275] formed all of counsel when the reports were received they would be kept by the court secret and confidential and not by the court disclosed to any person whatsoever; copies would be given to each of the counsel, the district attorney's deputies on the one side, and the public defender's deputies on the other side, and upon the delivery of those copies as they came in, counsel were again reminded that these were secret and confidential and were not to be disclosed to any person whatsoever. Disregarding that admonition, Mr. Matthews furnished certain professors or teachers or lecturers at the University of Southern California copies of the doctors' reports, which were then released to the press, to the extent that the press was informed that all the doctors had agreed as to the question of the sanity or insanity of the defendant.

Mr. Matthews: I deny your statement in toto.

The Court: That that matter was called to the attention of Mr. Cuff; Mr. Cuff again came over here and Mr. Matthews was here present and admitted the fact. Am I right, Mr. Cuff?

Mr. Cuff: That is the point at which he said that he had made a mistake in judgment, is it not? Isn't that the point where he said he had been told certain doctors or professors—

The Court: Mr. Matthews has chosen to throw the lie in my face—I am asking you, being present, whether that was [fol. 1276] not the subject of conversation, whether Mr. Matthews did not disclose that he had given those reports to the men at U. S. C.

Mr. Cuff: With some amendment.

The Court: Yes?

Mr. Cuff: It is, the reports that he had given information to the professors who are agents or doctors at the U. S. C. Medical College, that he had given them some information in talking over his case and that that is the point, I think that Mr. Matthews said I have made a mistake in judgment. Is that not true, Mr. Hendersen?

Mr. Matthews: Your Honor, may the record show at this time that I was never admonished by this Court not to di-

vulge psychiatric reports to psychiatrists, but rather the question was, and was not to be revealed to the press the question of whether this man was sane or insane. May the record show that prior to the conclusion of this part, the first trial, Judge Frick himself divulged to the press the question of whether this man was sane or insane; and that was in the paper prior to the time that the arguments went to the jury.

Mr. Cuff: I would like to have Judge Fricke complete his statement. I do not like to interrupt.

The Court: To comment upon Mr. Matthew's statement: it is true that I did file the reports after I found out that their contents had been passed on to the press through the [fol. 1277] information transmitted by Mr. Matthews to the University of Southern California teachers, and that the reason for withholding the reports from the press no longer existed since the press already had the information. I want to state very definitely that I did state to Mr. Matthews, and I stated to every counsel who received a copy of the report, that these were to be kept absolutely secret. There was no limitation or qualification that they could be shown to any person whatsoever.

Mr. Matthews: I deny that you made that statement, your Honor.

The Court: You may deny it, Mr. Matthews. Subsequently thereto Mr. Matthews came to my chambers and filed with the court a report, a report of Dr. Frostig and a psychologist containing among other things reference to the Rorschach Test, and requested me at that time that the matter should be kept absolutely secret and confidential, that nothing relating to the matters discussed therein should be given out at all, and that the reports should be treated with the same sacredness and confidence as the court's appointed alienists.

Mr. Matthews: May the record show that the statement Judge Fricke made is true except that in my mind the only part of that report that the court said is sacred was the aspect of sanity or insanity; and as to that portion I have never divulged to any one, nor as to any of the other reports [fol. 1278] have I ever divulged to any one except to members of our own office the findings of the psychiatrists.

The Court: Following that, on Thursday, January 5, appeared in the public press the report that the defense counsel had disclosed the fact that the defendant had undergone the Rorschach ink blot tests, a description of the test, accompanied by the theory of the Rorschach test diagrams. That the matter was again called to Mr. Cuff's attention, we had another conference, and Mr. Matthews admitted that there had been another mistake made by him.

Mr. Matthews: May the record show what Mr. Cuff's conversation was with Mr. Tom Caton of the Evening Herald?

The Court: I don't know anything about that, I am merely reciting what I personally know.

Mr. Matthews: May the record show, then, that Tom Caton of the Evening Herald received no portion of the Rorschach test from me, that rather through their file down there they obtained pictures of the Rorschach test and published that. That the story was published was not given by me other than the fact there was a Rorschach test taken and the rest of the matter pertaining to the Rorschach test was a matter of research by the Los Angeles Evening Herald.

The Court: That is splitting hairs. The point is, the matter that I asked Mr. Matthews to keep sacred and confidential, the contents of the report including the Rorschach [fol. 1279] test was turned over to the newspapers, and the fact that a Rorschach test had been given was published. I consider that a violation of a confidence of which I don't approve.

Mr. Matthews: Your Honor, it was not my understanding that the report—I didn't think about the report the same way that you did. I did not propose to violate my word to you. I thought the question of insanity or sanity—that report was never shown by me to any newspaperman. There was conversation about the Rorschach test itself, the Rorschach test is a matter of common knowledge, data can be obtained on it from other sources other than me.

Mr. Cuff: As to that point, a man called me on the telephone and said he was Mr. Caton, that Al Matthews had said something about they had given a Rorschach test; he said that all that was said, he said we went to the press room and we developed and enlarged upon that by some

research and made a story. Now, I didn't want to restrict—I didn't care to butt in here at all—going back to the original inquiry with regard to—let's see, which was the first one here? The letter from Dr. McNeil. I received a call from Judge Fricke one morning—I don't remember the date; I came over and Judge Fricke did show me the letter from—he talked to Mr. Hoveden first, and later I came to the office.

(Interruption not reported.)

[fol. 1280]. Mr. Cuff: (Continuing) Upon being shown that letter from Dr. McNeil—I believe Mr. Henderson and Mr. Alexander were here—Mr. Matthews was not here at that particular time—I advised the court that I thought that was very improper and should not be done and would not meet with the approval of our office, if true; that I would conduct an inquiry into the matter. Some time later that morning, I called Mr. Matthews before me and outlined—I did not outline to him what had been done, but I asked him if he had talked to Dr. McNeil. He said he had; that in complying with my request that he had written a letter previously and we subsequently changed the letter, which was—we were afraid it would only be confusing to the doctors—

The Court: You don't happen to have that letter any more, do you?

Mr. Cuff: It may be there in the file someplace.

Mr. Matthews: Might be, Mr. Cuff—pertains to People versus Wells—question of premeditation and deliberation.

Mr. Cuff: The gist of the letter was that we would like to have the doctors keep this in mind when we are interrogating the defendant at these points as . . . and set out the Caljic instruction. I was afraid at the time it would only confuse the doctors in the new rule regarding legal insanity. However, getting back to the conversation with Mr. Matthews; he said he talked to Dr. McNeil. I said what did you say? He said, I told him we were at a standstill, [fol. 1281] that we had confessions from Stroble, that he would confess to anybody that would talk to him; that we couldn't stop him from making confessions to the doctors or anybody else; but that we were to stand still until we

could get that report from the doctors; and about all we could do would be to look up the law and study on the fringes rather than anything material in the case; and that he had suggested to the doctor that he would like to have the report at the earliest date he could. He said the doctor rather laughed, he says I know how you feel. He said that was about all that was said.

Mr. Matthews: I did go into the aspect of People versus Wells, Mr. Cuff.

Mr. Cuff: I believe you said you had gone into the aspects of the Wells case, that principle of the law. I told Judge Fricke at the particular time that I was going to investigate, I would investigate every complaint that was made in the case; that in the progress of a trial it is difficult for a superior officer to be standing at the elbow of a deputy who is trying, possibly studying day and night on his case, to be second-guessing him, and I like to reduce that to a minimum, hoping that as a member of the Bar they would know how to conduct themselves as lawyers; but I would investigate the case. But pending the trial of this case it was difficult for me to take a deputy out of the case. I would be entirely unprepared to handle it, and I believe any [fol. 1282] other deputy that was not assigned to the case would be entirely unprepared. The other conversation we had here in this room, and that is with regard to the Rorschach tests, Al Matthews was here at that particular time, and had made a statement that he had made a mistake in making any statement at all, however brief, or words to that effect; and he said he took full blame for that.

Mr. Matthews: Yes, sir.

The Court: Well, we have sufficient instances, three instances, in which Mr. Matthews, to put it mildly, admitted making mistakes. I have no reason for doubting the statement made by Dr. McNeil's letter, whether he admits or denies it.

Mr. Matthews: Mr. Matthews doesn't know what is in Dr. McNeil's letter.

The Court: I will quote one sentence.

Mr. Matthews: Your Honor, I would like to have the entire letter.

The Court: I am quoting the sentence, and I will do it

as I please, Mr. Matthews. I will read a sentence to get the context. "He asked me if I would agree to read some material regarding this case if he sent it to me. I told him I was perfectly willing to read the material. He then went on to tell me that he and the people in his office felt very strongly about what the psychiatrist should include in his [fol. 1283] report. He said that they felt the defendant's statements regarding the crime should not be included in the report."

Mr. Matthews: I deny that.

The Court: I choose to accept Dr. McNeil's statement.

Mr. Matthews: May the record show that this court has never given me a hearing concerning this case at all; I have been deputy in his court for two years; the court inquired of Dr. Wyers and Dr. Parkin for the purpose of trying to enmesh me; that his report—I never got in touch with Dr. Parkin—that he communicated with those doctors in an attempt to build up a case against me—

The Court: That is rather a fantastic idea, because I did what I think anybody would do upon hearing Dr. McNeil was contacted, and hearing what occurred; I wrote the same identical letter to the three alienists whom I have appointed. The other two doctors said they had not been contacted. There was no desire to implicate anybody, but I did resent when a court appointed some expert some counsel telling that expert to leave out of his report absolutely essential material concerning the subject matter of the report.

Mr. Matthews: May the record show that Mr. Jerry Geisler in the case of People versus Wright specifically instructed his defendant to make no statements to the alienists in regard to the details of the crime.

[fol. 1284] The Court: Assuming that to be correct, I have no criticism of Mr. Geisler, but Mr. Geisler did not go and tell the psychiatrists what to put in their reports and what not to put in their reports. I am accepting Dr. McNeil's statement, in view of the fact that this is not a proceeding in which I am going to take any action at the present time. There is no occasion for getting Dr. McNeil's affidavit or taking his testimony. This discussion here is merely the reason why I believe that Mr. Cuff should be present in the courtroom, so that we don't have any irregularities.

Mr. Cuff: I would like to add further, that I—it is still my plan to pursue any investigation. I do not wish to be unjust with any man or any employee with me, or the court, but I do want to get all the true facts. I am not sure, but I think I told the Court that here before.

The Court: I will say, Mr. Cuff's ethical attitude here has been most commendable. Also the entire incidents have been extremely regrettable so far as this court is concerned; and when we finally thought we had the matter entirely ironed out, I had left the matter up to Mr. Cuff to take any action he thought should be taken, I told Mr. Cuff that I thought perhaps we had better forget the matter and hoped we would have no further trouble—

Mr. Cuff: That is right—and I want the record to show that the public defender's office is trying to conduct their [fol. 1285] work in accordance with the highest legal standards as laid down by the American Bar Association and the State Bar Association. We feel sometimes that persons can get too heated in a case, and possibly say things they would regret on more calm reflection. I don't know how much of this actually belongs in the record of the case of People versus Stroble.

The Court: All that portion of what has been taken by the reporter relating to my request to Mr. Cuff as to why I think he should be present in the courtroom during the remainder of the trial is not a part of the Stroble record.

Mr. Matthews: I resist that statement by the court. May the record show—

The Court: Well; of course, if you want these matters made public, that is your business. If you don't want the proceedings, I think Mr. Cuff and members of his office should not have this matter disclosed because it would reflect upon the office unjustifiably.

Mr. Cuff: There has not been a full hearing; so far as I am concerned, I don't want it disclosed; I want to conduct that honorably and properly and see what the judgment should be later on.

The Court: I am thoroughly in accord with that view.

Mr. Cuff: I may say in the record, so far as the case is concerned, I have had little or no contact with Mr. Stroble. [fol. 1286] It would be difficult for me to handle—

The Court: I am not asking you to participate in the trial, Mr. Cuff, but merely to sit in the courtroom at the sidelines so that if anything happens that shouldn't happen you will be able to see that this trial is conducted in a manner in which I believe trials should be conducted; in a calm, dignified manner, in accordance with the law and in accordance with the ethics of the legal profession, is what I am interested in.

Mr. Matthews: May the record show that I resent the court's remarks.

Mr. Cuff: May I have a few minutes? I had a few commitments today, luncheon time, that I want to—

The Court: I think we probably better recess until 2:00 o'clock.

Mr. Roll: What are you going to tell the newspapers?

Mr. Henderson: They heard you, Al, up there at the counter, they know about it.

The Court: I apparently have no control over what Mr. Matthews says to the newspapers. It is up to Mr. Cuff to advise Mr. Matthews. This business of telling the newspapers in advance what you are going to do and what your evidence is going to be doesn't meet with my approval at all.

Mr. Matthews: May the record show that the district attorney disclosed the confession of Stroble before he was [fol. 1287] ever brought to court.

Mr. Cuff: Has this got anything to do with the Stroble case? I don't think it has.

The Court: Mr. Matthews is trying to bring some matters in here.

(Mr. Roll's inquiry was reiterated and discussed.)

The Court: So far as I am concerned, I will say nothing to the press. So far as I am concerned, I will request nobody else tell the press anything.

Mr. Cuff: I told the press last night—they were asking what we were going to do today—and I said I could not tell you until we had a conference tomorrow morning. Mr. Matthews, apparently quite weary of the trial, went home—which is quite a natural thing to do after a long trial—and we were in no position to have a conference to find out what evidence was material, or what he would consider. We had such a conference this morning, and certain deci-

sons were made; some of the decisions, possibly, did not meet with Mr. Matthews' approval, but that has got nothing to do—as a lawyer possibly he has a right to his own opinion—and I as head of the public defender's office have my right to my own idea. Mr. Matthews said he would comply with my requests in the matter.

The Court: I think I wouldn't be sure he does comply with your request, to be perfectly frank with you.

[fol. 1288] Mr. Roll: Judge, let me ask one thing: is there any objection to some—so far as his offer of proof, which I understand was made here in the record, as to advising the press as to what your ruling was in so far as his offer of proof on the voir dire examination—

The Court: I will state that in the record when I get out on the bench. The district attorney can interpose an objection. I will rule on it.

Mr. Cuff: That will handle that.

The Court: No, I don't think there is any objection to that, that is part of the court proceeding: I don't think any of the details of the matter should be disclosed.

(Whereupon, after a lapse of time following the close of the session foregoing, the jury not being present, the following proceedings were had in open court:)

The Court: In the case of People versus Stroble, we will come to order again. Let the record show at this time that that portion of the court proceedings which were conducted in chambers have been transferred back here, the offer of proof having been completed.

Mr. Alexander: Has that offer of proof been completed?

Mr. Matthews: Yes, your Honor.

Mr. Alexander: People object on the ground it is incompetent, irrelevant, and immaterial, and is not—any voir dire of the juror at this time is not proper.

[fol. 1289-1294] The Court: Objection sustained.

Mr. Matthews: Your Honor, may we ask for a recess until 2:00 o'clock?

The Court: Yes.

Mr. Alexander: Did your Honor say you want us to remain in attendance?

The Court: Yes, by reason of something else which has developed. I will take just a moment's recess.

(Short recess.)

(After recess, 11:30 a.m.)

The Court: Let the record show the jury, counsel, and the defendant present. Ladies and gentlemen of the jury: we found that we would hardly be able to proceed at this time, so we are taking a recess until 2:00 o'clock this afternoon. In the meantime, keep in mind the admonition. Return here at 2:00 o'clock.

(Whereupon an adjournment was taken until 2:00 o'clock p.m. of the same day.)

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[fol. 1295] IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

Cr. No. 5100

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent

vs.

FRED STROBLE, *Defendant and Appellant*.

Reporter's Partial Transcript of Oral Argument

June 16, 1950

Before Chief Justice Gibson, Justice Shenk, Justice Edmonds, Justice Schauer, Justice Carter, Justice Traynor, Justice Spence.

[fol. 1296] Los Angeles, California, June 16, 1950

(Oral Argument by Mr. Gray.)

Mr. Richards: I assume that members of this Court are familiar with the facts of the case. I will not make a detailed statement of the facts.

Mr. Justice Schauer: What have you got to say about that refusal to permit counsel to see his client while the District Attorney was endeavoring to get a confession from him?

Mr. Richards: I have this to say about that. The record shows that counsel, Mr. Gray, did not state that he represented the defendant. In other words, this was a situation, as I gather from the record, where Mr. Gray was a friend of Mr. Hausman, son-in-law of the defendant.

Mr. Justice Schauer: He stated that he had been requested by the son-in-law to come up there to see the defendant, did he not?

Mr. Richards: He stated that he was requested by the son-in-law to come up to see whether or not the defendant was guilty of this offense.

Mr. Justice Schauer: Didn't he state that he wanted to advise Mr. Stroble of his rights?

Mr. Richards: There is nothing about that. That was a statement of Mr. Gray in his brief, or, I believe, on his motion for a new trial, or something like that. He made an affidavit to that effect, but nothing was said about that in the record that I recall, that he wanted to advise Mr. Stroble of his rights.

[fol. 1297] The Chief Justice: Why wasn't he permitted to see the defendant?

Mr. Richards: As I understand it, he was not counsel for the defendant at that time. That is his statement.

The Chief Justice: Who is going to determine that? Is that the District Attorney's business to determine that? An attorney says, "I want to see a man who is under arrest," or "who is in custody". Shouldn't he be permitted to see him? Is the District Attorney the judge?

Mr. Richards: No, he is not the judge. I will grant that.

Mr. Justice Schauer: Did you ask the defendant if he wanted to see this attorney who had been sent up to see him?

Mr. Richards: I don't think there is anything in the record that the defendant—

Mr. Justice Schauer: Do you know whether that was done or not?

Mr. Richards: Do I know?

Mr. Justice Schauer: Yes, you surely know that.

Mr. Richards: I don't know. All I know is what is in the record. How do I know what these district attorneys do? I am not around their offices.

Mr. Justice Schauer: You are not very proud of what this record shows.

Mr. Richards: I wouldn't say that. I think I am pretty proud of Mr. Simpson, our District Attorney here in this county.

[fol. 1298] Mr. Justice Schauer: I am talking about this record.

Mr. Richards: You are talking about whether I am proud of the record. I never take it as whether I am proud of it or not. I take it as it is. It is not a question of my feelings.

Mr. Justice Schauer: That is correct. That is what you are faced with.

Mr. Richards: I am going to get along as best I can with it. You might knock me out of the picture. I don't know, but I am just going to take this thing as it is, because I don't believe there is anything serious done here that injured the defendant in any way.

The Chief Justice: Why wasn't he taken before a magistrate?

Mr. Richards: Because they wanted to question him first. That is all I can see. I will be frank with you. I am not trying to hide or conceal anything.

The Chief Justice: They wanted to get a confession before they took him before the magistrate?

Mr. Richards: I assume so, and that is what is done in most cases. They want to get a statement out of the defendant when the matter is fresh, before some lawyer gets to him and advises him of his constitutional rights. To be frank about it, Justice Carter has been a district attorney. I don't know what your practice was up there.

Mr. Justice Carter: We used to do that too.

[fol. 1299] Mr. Richards: Well, you see, there is nothing unusual about it.

Mr. Justice Edmonds: You think that complies with the law?

Mr. Richards: I don't think it is contrary to the law.

I don't know of any law that says the district attorney hasn't any right to question a suspect who has been arrested for an alleged offense. There is nothing in the statutes that says he can't question them.

Mr. Justice Carter: There is no doubt that the district attorney has the right to talk to a suspect, whether he is under arrest or not. Of course, the question here is whether or not the District Attorney had the right to refuse counsel to see the defendant when counsel came there and said he wanted to see him. That is the question.

Mr. Richards: I think Counsel first asked to see Mr. Alexander or Mr. Henderson, deputy prosecutors, and the girl at the outer desk said they were in conference, and then he asked to see the District Attorney. I have the two deputies here. You can question them if you like on the situation. They know—I don't. I just go from the record. I try to stick to the record.

Then Mr. Gray asked for Mr. Simpson to see him, and he was told that Mr. Simpson was in conference.

Mr. Justice Edmonds: Isn't it perfectly apparent that this man went up there and said he wanted to represent Mr. [fol. 1300] Stroble, or was there in his interests and was trying to see him?

Mr. Richards: No, that isn't correct. Let me straighten you out on that situation. He went up there to find out for his client, Mr. Hausman, as to whether or not Stroble had committed this murder. That is what he went up there for. He didn't go up there to represent him, and, in my opinion, he didn't go up there to inform him of his constitutional rights. That is not in the record, except that it came in on the motion for a new trial by affidavit, I think, by Mr. Gray. Now that is when that came in for the first time. In fact Mr. Gray didn't even represent Stroble at that time.

Mr. Justice Edmonds: He was trying to.

Mr. Richards: No.

Mr. Justice Edmonds: At the request of the son-in-law.

Mr. Richards: No, he wasn't trying to represent him. He was trying to find out whether or not Stroble had committed this murder. That is all there is to it.

Mr. Justice Edmonds: That is a rather naive explanation. From your long experience in criminal practice—

Mr. Richards: Don't go to my experience in criminal practice. I am going on the record. You are trying to get me outside this record as to what my experience has been. I have done things I probably shouldn't have done in prosecuting cases, but the circumstances are such that lead [fol. 1301] me to do it. I know the Supreme Court way back in 1916 or '17 almost threw me out bodily for what I had done relative to some Christian Pacifists during the first World War.

That is going back quite a ways, so I say I am trying to stick to the record and just what it shows.

The record does not support the claim that Mr. Gray represented Mr. Stroble until after the trial on the plea of not guilty, and then for the first time he comes into the picture. He was flirting around, yes, but that is not actual representation. If a man comes to the District Attorney's office and says, "You have my client in there. I want to advise him of his constitutional rights, and I demand to see him," that is one situation.

But he came there and just said, "I just want to see Mr. Alexander or Mr. Henderson or the District Attorney. I represent Mr. Stroble," when, in fact, he didn't represent him. Mr. Gray had told them on the night previous to that out at Mr. Hausman's house that he didn't represent Stroble and he wouldn't represent Stroble if Stroble was guilty.

Now, with all of that, can you put your finger on the District Attorney and squash him because when they were questioning the defendant up there Mr. Gray came and said, "I want to be in there"? I don't know what you and I would have done under the circumstances. Maybe we would have thrown open the doors and had him escorted in, but we are here on a question of law now. We are not here on [fol. 1302] a question of fact, as to what we should have done, or whether there was a breach of etiquette or ethics or something of that kind. We are here on a legal situation.

Mr. Justice Edmonds: That is, whether or not there has been a deprivation of constitutional rights.

Mr. Richards: Where is there any constitutional right to demand to see the defendant when he is in the District

Attorney's office? He has that right if the defendant is in jail.

Mr. Justice Edmonds: He has no right to counsel in the District Attorney's office? He has to be in a cell?

Mr. Richards: I didn't say he didn't have the right of counsel when he is in the District Attorney's office. I said insofar as his constitutional rights are concerned, they so far have not been interpreted as meaning that he has a right to walk into the District Attorney's office and demand to see anybody. It has never been laid down yet by the Supreme Court of the United States. It might be in this case, if it goes that far, but so far they haven't done it.

They say the defendant has the right of counsel during all stages of the proceedings. What does that mean? Court proceedings. Further than that he has the right to consult with his client. When his client is in the county jail he may consult with him. He has the right for time to prepare his case, and so forth.

The Chief Justice: Shouldn't he be permitted to see [fol. 1303] an attorney any time after he has been taken into custody. He had been taken into custody, had he not?

Mr. Richards: Are you talking about constitutional rights or a matter of ethics?

The Chief Justice: I am talking about a legal right.

Mr. Richards: He has a legal right, and there might be some violation of a legal right, but when we come to constitutional rights we are on a different subject. It is just like you walk into a man's home without a search warrant and ransack the place and find something against him, or go through all of his papers and he is charged with grand theft or something else, and in court he asserts that it was a denial of his constitutional right of privacy.

You can't go into a man's home without a search warrant, and yet this Court has held that regardless of how it is obtained, that evidence is admissible. Aren't we getting to the situation, that, regardless of whether some legal right is violated or not by the District Attorney refusing to admit an attorney to see a defendant who was being questioned, the main thing is whether or not that violates any fundamental right guaranteed by the constitution of the United States.

I hope I have answered all the queries.

Mr. Justice Edmonds: You have commented upon them.

Mr. Richards: That is a rather evasive statement on whether or not I have convinced your Honors that I am right in what I contend here.

[fol. 1304] Now, the question of this confession—that matter about kicking and slapping is exaggerated. I understand when this defendant was arrested in a bar, the traffic officer arrested him with the person who identified the defendant and took him down to the park headquarters at Pershing Square. The headquarters are underground, and while the officer was searching the defendant he had him stand with his hands up against the wall, and his feet out, and while the officer was searching, the defendant moved his feet forward and the officer kicked his feet back a little bit so the defendant would be off balance in leaning against the wall while being searched.

That is the kicking, and you would think by the way Counsel expressed it, some bull had kicked him or something else, but that is the extent of all the kicking.

On the question of slapping, the foreman at the park did slap this defendant, but those matters had nothing to do with the confession that was taken a couple of hours later in the District Attorney's office. The defendant himself said that the officers had treated him with all consideration, so that point is exaggerated. Insofar as the confession is concerned, when they say he was coerced, why, the record shows that the defendant made these same statements to psychiatrists appointed by the defense counsel. The same questions and answers were repeated so many times by the defendant in his statements to these psychiatrists, that there can be no question but what they are true and correct, [fol. 1305] and there was no compulsion or anything of that sort.

One interesting point is this, the question of premeditation and deliberation. I am inclined to adopt the views or the opinions of one of the psychiatrists, Dr. Crahan. He stated this: "Immediately before defendant choked Linda,"—that was the little girl—"she screamed, and this produced in defendant a sudden panic and fear, and he choked her

by reflex action. It was not premeditated, but it was deliberate as a defensive act."

I don't agree to that statement, but, with that exception, I agree to the rest of it. The defendant told him that he thought that Linda was still alive after he choked her. He thought it was obvious, that the thought running through defendant's mind when he went to get the necktie was that he intended to finish the job of killing her.

It was a deliberate move and a deliberate act to get the necktie for a set purpose, and this act was premeditated.

It was his opinion that when the defendant selected the hammer as a weapon and used it on the child, he had his thought processes changed to one of wanting to end her suffering. At first it was defensive. Next it was pity and hoping to end her suffering as a result of his earlier acts. In his opinion defendant intended to kill the child when he selected and used the hammer as a weapon, and this was a deliberate and premeditated act. In his opinion, when defendant got the icepick and stuck it into the child's body, [fol. 13C] he was deliberately trying to murder her—to finish the murder, complete it.

This was a deliberate, premeditated act on defendant's part. The defendant told him that after he used the icepick he thought the child might still be alive, so he got the axe and used the axe on her. This was a deliberate use of the axe to complete the murder, at which time he intended to kill her, and it was a deliberate and premeditated act.

When the defendant went and procured the knife and used it on the back of the child's neck, he intended to kill. The selection and use of this knife was a willful, deliberate, and premeditated act on defendant's part.

I think that clearly expresses it, and I agree with all except that first statement, and that is this: "Immediately before defendant choked Linda, she screamed, and this produced in the defendant a sudden panic and fear, and he choked her by reflex action. It was not premeditated, but it was deliberate as a defensive act."

There is the beginning of this murder. He has this little child on the bed.

Mr. Justice Schauer: What difference does it make

whether the first act was reflexive or not, in view of the use of all these other instruments?

Mr. Richards: It doesn't make any difference, except I wanted to comment on the first part, that is all, to give my interpretation of it.

He had formerly assaulted this little girl by sexually [fol. 1307] playing with her, and those times she didn't resist. She said she liked it, but this time he took her into the bedroom and put her on the bed, and started to lie with her sexually.

She said, "Let's get out of here, and go outside and play," and he said, "No, I won't hurt you."

Then after pleading with him two or three more times to go outside, he got on top of the little girl and she screamed, which she had never done before.

According to one psychiatrist, the window was open, so the defendant said he didn't want to let the neighbors hear the little girl scream, so the doctor here says he choked her by reflex action. I don't think so. I think if he had a reflex action at that time he would have put his hand over her mouth. That would have been a reflex so that the neighbors couldn't have heard the scream. That would have been his logical reflex, but when he put his thumbs on her throat and choked her, that was with the intent then to silence her so that she couldn't tell her parents. Formerly when he played with her she didn't tell on him, but this time he was afraid she would, so he choked her with his thumbs, and that lasted for ten minutes, I believe, according to his statement. He must have been reflecting that in his mind at that time. I don't see how you can choke a person, specially an adult with a child, for ten minutes, without a reflex going through one's mind as to what he is doing.

Now we come to what the doctor said about when the [fol. 1308] defendant left the little girl. She still was wiggling or twisting. He got the necktie from a rack and tied it around her throat. Now the doctor said that is when he deliberated and premeditated, and in my opinion he deliberated and premeditated when he kept his thumbs on that little girl's throat with the intent to kill her.

As to these other matters, set forth and argued by Counsel, I will attempt to answer them in respondent's brief.

I have here Mr. Alexander of the District Attorney's office, who prosecuted the case. He told me he would like to say a few words, since this is a death-penalty case. Would the Court like to listen to him?

The Chief Justice: Very well, you may.

Mr. Alexander: I am concerned with what transpired so far as this so-called denial to this defendant of his right to counsel is concerned.

If the Court please, I think this record will bear me out when I say that no single act of Mr. Simpson's, Mr. Henderson's, or mine, or collectively, causes me to be ashamed of anything that was done in this case.

The Chief Justice: What are the facts, as shown by the record?

Mr. Alexander: The record shows there is testimony on the part of at least five witnesses—that is, Officer Donahoe, Brennan, Tullock, Mr. Henderson, and my testimony—that the very night before Stroble was apprehended Mr. Gray [Vol. 1309] on two different occasions stated, once at the police station when he said, "I'm not a criminal lawyer. I do not represent Stroble and I won't represent Stroble." That was said on the first occasion in the presence of five or six people. It was repeated again that night at the home of Stroble's daughter by Mr. Gray.

The testimony is in the record that the following day Chief Deputy Roll, Mr. Barnes, who is the Assistant District Attorney, and I asked Mr. Gray, "Why do you want to see Stroble?"

His answer was, "I want to find out whether Stroble is guilty. I want to hear it from his own lips, and if it is so then his son-in-law and daughter will have nothing whatsoever to do with him."

If the Court please, I submit that if we are to throw our doors open to any and every attorney in this county who comes to see a defendant, whether through curiosity or any other reason, the administration of justice certainly is going to be retarded.

Mr. Justice Edmonds: Don't you think this was a fair request, even as you state it?

Mr. Alexander: I don't think so, and I say that most respectfully. Here is Stroble in the office giving the story

of what he did, and here is a man who comes and says, "I want to hear from his own lips whether he is guilty: so that I can report back to his family." With the previous notice that this man was not Stroble's attorney and would not be [fol. 1310] his attorney, is it not reasonable on our part, then, not to be interfered with at that time when this defendant was giving the story of his actions?

The Chief Justice: What he said before wouldn't be conclusive. What he said before as to what he intended to do at that time wouldn't be conclusive.

Mr. Alexander: That very day he also stated that the sole purpose of his visit—

The Chief Justice: That is the question, what did he say then?

Mr. Alexander: There is testimony in the record from three or four people that he did say—

Mr. Justice Schauer: He had been represented by Mr. Gray in the charges that were pending at that time, had he not?

Mr. Alexander: Mr. Gray was his attorney of record, I believe, in that case, yes, sir. But I think we can take Mr. Gray's word for it when he tells half a dozen people on several occasions that he doesn't represent Stroble and will not represent Stroble.

Mr. Justice Schauer: From your statement, he wanted to find out whether he would or would not represent him.

Mr. Alexander: The record does not show that.

Mr. Justice Schauer: Your statement did not intend to imply that, then?

Mr. Alexander: No. My statement did not intend to [fol. 1311] imply that Gray came there for the purpose of determining whether he would or would not represent Stroble. No, that was not my statement.

Mr. Justice Carter: He said he would not represent him if he was guilty. Wouldn't that carry the inference, if he thought he was not guilty, that he would represent him?

Mr. Alexander: No, I believe Mr. Richards was mistaken in that. The record does not bear out that, "I will not represent him if he is guilty."

The record says, point-blank, "I will not, I do not repre-

sent him, and will not represent him," and there was no condition attached to it. That is the record.

Mr. Justice Edmonds: As Mr. Richards described it, you were engaged in getting a confession before he could get anybody to advise him as to his constitutional rights. An attorney comes and says, "I am here at the request of his daughter and son-in-law to find out about this."

Then, you say, the District Attorney has a perfect right to close the door?

Mr. Alexander: I say this, if the Court please, at that particular point where Counsel comes, not with a view of representing a defendant or appearing as his counsel, but merely to satisfy the curiosity of a daughter and son-in-law, or himself, I think it is reasonable that he be not permitted to see that defendant at that time.

Mr. Justice Edmonds: And that squares with your idea [fol. 1312] of a fair administration of justice?

Mr. Alexander: I think so. After all, an attorney is there for the purpose of representing a defendant, and unless he represents that defendant or intends to represent that defendant, does he have a greater right than the thousands of lawyers that we have in this state? Supposing all would come for that purpose.

Mr. Justice Schauer: And you knew that he had previously represented him and was attorney of record in this other case?

Mr. Alexander: I don't know whether we knew it or not, but frankly, I did know it.

So far as the coercion of any confession from the defendant is concerned, the record shows affirmatively at no time did this defendant request the presence of Mr. Gray or any other attorney.

The Chief Justice: Did you tell him Mr. Gray was out there and would like to see him?

Mr. Alexander: I did not.

The Chief Justice: Did anybody else tell him?

Mr. Alexander: Not in my presence.

The Chief Justice: He was never informed that Mr. Gray was trying to see him?

Mr. Alexander: Not in my presence was he ever informed, and I don't think the record shows he was so informed.

The Chief Justice: Is there anything else you would [fol. 1313] like to say?

Mr. Alexander: I believe the facts were covered by Mr. Richards.

There was one point there so far as the coercion of this defendant is concerned. The record is absolutely devoid of any testimony that at any time was this defendant coerced into saying anything by anybody.

Mr. Gray: I would like to point out Mr. Richards has said that the first time I said I wanted to advise the defendant about his constitutional rights, was by some affidavit which was put in a motion for a new trial. That was not true. There was a hearing under Penal Section 995 to set aside the information, on December 9. At that time, in response to a question by the trial judge as to what my purpose was in going there, I told him that I went there to advise the client of constitutional rights. That also appears in the record during the course of the trial, at the time of the objection to the introduction of the confession.

Further, I would like to state that the statements made by Mr. Alexander concerning the record are statements which were made by police officers, and not by me. I would like to point out to the Court that at the time that this defendant was being sought and this manhunt was going on, they weren't interested whether I or anybody else represented him. They wanted to find him. Three of the officers have testified that I said to them the night before the defendant was apprehended that I wanted to just find out [fol. 1314] from his lips whether he was guilty or not. Well, that never occurred, and it wasn't in the minds of any of us. We were just as anxious to find him as the police were.

When I went there, I intended to represent him. It's true I didn't represent him, because I wasn't given the opportunity. I did what I could, in accordance with the request of the family, and I stayed there until I saw the defendant at 9:30 that night. That was the first opportunity I had to see him.

[fol. 1315]

REPORTER'S CERTIFICATE

(Omitted in printing)

[fols. 1316-1317] IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

Crim. No. 5100

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,
VS.FRED STROBLE, *Defendant and Appellant.*

OPINION

[fol. 1318]

[In Bank Jan. 19, 1951.]

(1) Criminal Law—Appeal—Determination—Reversal.—

It is not the function of the Supreme Court to reverse a judgment in a criminal case solely as a rebuke to "law enforcement" officers for their lawless acts and improper administration of law, independent of the trial which resulted in that judgment.

(2) Homicide—Evidence—Deliberation and Premeditation.—A prima facie showing of deliberation and premeditation is made in a murder case by evidence, apart from defendant's confessions, that the killer collected several different weapons from various places about the murder scene and used them in a manner evidencing an intent to kill.

(3) Criminal Law—Appeal—Harmless and Reversible Error.—A murder conviction will not be reversed merely because of excessive publicity accorded the case, or because of the district attorney's conduct prior to trial in releasing details of defendant's uncompleted confession to the press and the expression of his belief that defendant was guilty and sane, where the verdict was not influenced by the publicity or conduct, evidence of guilt is ample, the case was fairly presented, and defendant was represented by able and experienced counsel.

(4) Id.—Evidence—Confessions.—Due process is violated by introduction in evidence of a confession, if material, which resulted from physical abuse or psychological torture.

(5) Id.—Appeal—Harmless Error—Evidence—Confessions.—Assuming that a confession introduced in a murder case resulted from physical abuse or psychological torture of defendant, he is not prejudiced thereby where he makes several subsequent admissible confessions of similar substance after consultation with counsel and appearance before a magistrate.

(6) Id.—Rights of Accused.—Const., art I, § 8, and Pen. Code, § 825, requiring that one arrested for a felony be taken [fol. 1319] without unnecessary delay before a magistrate, and permitting an attorney to visit him if requested by the prisoner or his relatives, are violated, where the prisoner is arrested about noon, is interrogated until 3 p.m. in the district attorney's office in the same building housing a municipal court, is taken to another building, an attorney requested by the prisoner's relative is not permitted to see him until 9:30 p.m., and the hearing before the magistrate is held the next morning.

(7) Id.—Appeal—Harmless and Reversible Error.—A prisoner is not prejudiced by a violation of his constitutional and statutory rights, although he makes several confessions before being arraigned and before a requested attorney is permitted to see him, where the prisoner after consultation with attorneys shows no desire to remain silent but makes repeated confessions.

(8) Id.—Preliminary Examination—Aid of Counsel.—It may not successfully be asserted that accused is deprived of effective representation by counsel at a preliminary hearing because such hearing is set a day earlier than requested by

(2) See 13 Cal.Jur. 596, 676; 26 Am.Jur. 186.

(4) See 8 Cal.Jur. 110; 20 Am.Jur. 420.

(6). Delay in taking before magistrate, note, 79 A.L.R. 13. See, also, 7 Cal.Jur. 940.

McK. Dig. References: (1) Criminal Law, § 1447; (2) Homicide, § 158; (3, 7) Criminal Law, § 1340; (4) Criminal Law, § 467; (5) Criminal Law, § 1382(27); (6) Criminal Law, §§ 103, 108; (8) Criminal Law, § 163; (9, 11, 12) Criminal Law, § 235; (10) Criminal Law, § 107.

counsel, where the latter, at the hearing, asserts that he is ready and does not request a continuance.

(9) *Id.*—Separate Proceeding on Issue of Insanity.—A convicted defendant is not prevented from disclosing possible bias of a juror by the court's refusal to permit further voir dire examination of him at the beginning of the insanity section of the trial, where the asserted grounds for the juror's disqualification were unfounded, and no objection to the juror was made until after the verdict of guilty.

(10) *Id.*—Rights of Accused—Right to Counsel.—A defendant's right to counsel does not include the right to be represented by a particular deputy public defender, and an accused is not, therefore, deprived of his right to counsel of his choice merely because a public defender in whom he has confidence is required by the court to withdraw from the case.

(11a, 11b) *Id.*—Separate Proceeding on Insanity Issue.—A determination that defendant understood the meaning of a "waiver of jury" on the issue of insanity will not be disturbed, where counsel discussed with him the possible harmful effect expected evidence might have on the jury, and defendant several times stated "I have had enough of that jury. Get rid of them."

(12) *Id.*—Separate Proceeding on Issue of Insanity.—A convicted defendant who submits the issue of insanity on the testimony adduced on the not guilty issue and on physicians' reports is not deprived of a trial on the sanity issue on the grounds that no evidence of legal insanity was adduced on the not guilty issue, and that the reports were hearsay, where he fails to show he could have produced evidence of insanity had a different procedure been followed, [fol. 1320] and he is well represented by counsel.

Appeal (automatically taken under Pen. Code, § 1239) from a judgment of the Superior Court of Los Angeles County and from an order denying a new trial. Charles W. Fiske, Judge. Affirmed.

Prosecution for murder. Judgment of conviction imposing death penalty affirmed.

John D. Gray, Harold J. Ackerman, Harry Kitlar, Clore Warne, Edmund W. Cooke, A. L. Wirin, Fred Okrand, Loren Miller, Robert S. Morris, Jr., Bayard F. Berman and Leon M. Cooper for Appellant.

Fred N. Howser, Attorney General, Frank Richards, Deputy Attorney General, W. E. Simpson, District Attorney, and A. Alexander, Deputy District Attorney, for Respondent.

Schauer, J.—Defendant appeals from a judgment which imposes the death sentence and from an order denying his motion for a new trial. He was charged with murder and pleaded not guilty and not guilty by reason of insanity. The death sentence was imposed pursuant to a jury verdict which found him guilty of first degree murder and the trial court's finding, after waiver of jury on the insanity phase of the trial, that he was sane at the time of the homicide. We have concluded that defendant was fairly tried and properly convicted.

(1) It is true, as defendant points out, that the record discloses that representatives of the People, prior to the trial, were guilty of flagrant misconduct. Such misconduct, however reprehensible, does not appear, under the extraordinary circumstances of this case, to have materially affected the regularity of defendant's trial and conviction; and it is not the function of this court to reverse a judgment solely as a rebuke to "law enforcement" officers for their own lawless acts, and improper administration of law, independent of the trial which resulted in that judgment.

Sufficiency of Evidence

Defendant argues that the evidence does not show deliberation and premeditation. Except as to this issue there is little conflict in the evidence as to any significant fact, either objective (defendant's physical acts, which included the infliction of many mortal wounds) or subjective (defendant's state of mind, which included the ultimate fact of specific intent to kill). There is much expert testimony variously interpreting defendant's state of mind in relation to "deliberation" and "premeditation." Defendant did not take the stand; his description of his unwitnessed behavior is found in seven detailed confessions, all in substantial accord, and at least five of which appear to have been voluntarily and legally given.

Defendant's victim was a girl, 6 years of age. On the day of the killing (November 14, 1949) defendant, a man of 68, was in a state of nervous apprehension and had been drink-

ing alcoholic beverages. This mental state, which was an important contributing cause of the homicide, arose in the following manner: Four months previously defendant had been arrested on a charge of contributing to the delinquency of minors. The charge was based largely upon his having assertedly fondled small girls to satisfy his sexual desires. Defendant was released on bail. He did not appear for trial, but fled from the state, and a warrant for his arrest was issued. In November he furtively returned to Los Angeles to visit his daughter, son-in-law and their children. The son-in-law told defendant that he must surrender to the authorities. Defendant was terrified at the prospect of going to the police; he promised to, but did not, do so.

Defendant was alone in the home of his daughter and son-in-law on the afternoon of November 14. His victim came to the house seeking defendant's grandchild; her playmate. Defendant kissed and fondled her. Assertedly, the child on previous occasions had submitted to such treatment without protest and with apparent pleasure. On this occasion, however, she objected and started to scream. Defendant, in a terrified attempt to silence her, choked her with his hands. She became quiet; he stopped choking her; then she moved again; and defendant knotted a necktie tightly around her neck. Then, with intent to kill the child (who was not yet dead) in order to terminate her suffering, defendant inflicted the following injuries with various instruments which he obtained successively from various places: Two hammer blows on the temple; three stab wounds, two in the chest and one in the back, with an ice pick; six skull fractures with the blunt end of an axe; one stab wound, which cut the spinal cord, in the back of the neck with a kitchen knife. The last wound was in imitation of the final wound which defendant had seen inflicted on bulls at bull fights.

{fol. 1322} Defendant then went to Ocean Park, rented a room under an assumed name, and spent two days wandering about. On the morning of November 17 he returned to Los Angeles. He was sitting in a bar at Fifth and Hill Streets, drinking beer and attempting to decide whether he should get in touch with his family, the attorney who had represented him in connection with the pending morals charge, or the police, when he was arrested.

Corpus Delicti

(2) Defendant urges that the corpus delicti was not proved by evidence independent of his confessions. He argues that there is nothing in the record except his extrajudicial statements which could show that the murder was deliberate and premeditated, because (citing *People v. Letourneau* (1949), 34 Cal. 2d 478, 487 [211 P. 2d 865]) deliberation and premeditation cannot be inferred from the manner in which the wounds were inflicted. The *Letourneau* case does not support this argument. There, *Letourneau's* attorney asked the autopsy surgeon whether "whoever inflicted the wounds on this woman certainly must have been operating at the time under an abnormal . . . frame of mind." An objection to this question was held to have been correctly sustained, in that, as was expressly pointed out, "it is not shown that from the nature of the wounds alone the doctor could draw any material inferences which the jury themselves could not draw"; it is not there suggested that the jury could draw no inferences from the condition of the victim's body. Here, five different implements were used, each in a manner evidencing an intent to inflict death, not merely injury or random mutilation. There is evidence apart from defendant's confessions that before the child's death the implements were at various places about the premises. An inference can be drawn that the killer who collected and used the implements had determined that he wished to bring about death and carried out that determination. This, in the light of the other circumstances including the charges against defendant which were then pending, is a sufficient *prima facie* showing of deliberation and premeditation.

Asserted "Atmosphere of Public Pressure"

(3) Defendant claims that he was deprived of a fair trial because the trial court did not protect him from, and the district attorney fostered, "public pressure." The killing and the subsequent search for defendant received much publicity. Immediately after defendant's arrest he was taken [fol. 1323] to the office of the district attorney, interrogated, and confessed. The district attorney, even before defendant completed his statement, released to the press

details of the statement (including defendant's admissions of sex play with his victim and other children on occasions prior to the killing) and also announced his belief that defendant was guilty and sane. At the time of defendant's arrest and at the time of his trial (which began some seven weeks later) there was notorious widespread public excitement, sensationally exploited by newspaper, radio and television, concerning crimes against children and defendant's crime in particular. In these circumstances, defendant argues, it was impossible for him to obtain an unbiased jury, and the process requires a new trial even though there is no showing that any juror was actually influenced by the sensational publicity and the popular hysteria.

In connection with his claim of "public pressure" defendant also calls attention to the following statement by one of his counsel (veteran Deputy Public Defender John J. Hill; defendant was not then represented by his present private counsel) made during his closing argument: "I wish to make this commentary with reference to just what has occurred before the Court took the Bench. I refer to the televising and the pictures taken of the jury entering the box, and with counsel. . . . I don't like this added publicity in the case; and yet we conform, we cooperate with the men, our fellow human beings in the vocation, and therefore we accept it as part of what we have to expect in a case that has attracted so much attention, that has been so widely publicized, and concerning which there have been utterances over the radio, in the public press, which have unduly accentuated the importance of this case? . . . [Well] shall not be influenced in the slightest degree in that calm deliberation, dispassionate discussion, and arriving at a verdict under the institutions under which we live, and concerning which we are proud: the American way of the conduct of a trial."

It seems that the traditional concept of the "American way of the conduct of a trial," particularly a trial for a sordid criminal offense such as that of defendant, includes both the aspects mentioned so understandingly by Mr. Hill: on the one hand overstimulation, by mass media of communication, of the usual public interest in that which is gruesome; on the other hand a trial by a judge and jury

immune from the public passion. General denunciations of the journalistic sensationalism which customarily surrounds [fol. 1324] a trial such as that of defendant, and which did surround defendant's trial, do not solve the question whether defendant's trial was fair. We may agree with defendant that it was improper for the district attorney to issue "play-by-play bulletins" during the course of defendant's confession. But there is no indication that the jury, two months after the improper statements were made and immediately after hearing evidence, based their verdict on the newspaper accounts of the statements rather than upon the evidence. We can also assume that it was improper to allow the taking of news photographs or televising of scenes in the courtroom; but there is no indication that the jury's verdict was influenced by the taking of the pictures or the televising of courtroom scenes.

As defendant points out, the bias of jurors who have been exposed to repeated sensational publicity concerning a case is likely to be unconscious; they may honestly disclaim bias and yet have unknowingly prejudged the case. But where, as here, the defendant has been represented by able and experienced counsel, the evidence of guilt is ample, and the presentation of the case in court (despite the improper taking of pictures and televising) is fair, we should not reverse because of mere speculation that the jury might unconsciously have been improperly influenced adversely to defendant in the performance of their duties.

Confession of Defendant Made in the District Attorney's Office Immediately After Arrest

Defendant contends that admission in evidence of this confession was a denial of due process. There is no claim that the confession is false; in fact, defendant relies on it as true in his discussion of the asserted insufficiency of the evidence; and its substance is the same as that of other confessions which were put in evidence without suggestion that they were coerced or made under the influence of the asserted previous coercion.

It is asserted that the following circumstances made the first confession involuntary: Prior to defendant's arrest, a complaint charging him with murder had been filed and a

warrant for his arrest had been issued. At about 11:50 a. m. on November 17, 1949, defendant was arrested. The arresting officer "pulled him off the stool [in a bar where defendant was drinking beer] and searched him" and took him to the park foreman's office in adjacent Pershing Square. There the officer at once reported by telephone to the Homicide Division. Defendant was asked "if he was [fol. 1325] guilty of what he was accused and he mumbled something under his breath that sounded like 'I guess I am,'" and the park foreman slapped defendant with his open hand, knocking off defendant's glasses. The officer then searched defendant thoroughly; he "stood Stroble up facing the wall and put his hands up against the wall . . . and kicked his feet out so he would be off balance for the search. . . . [T]wo or three times he put his feet forward," and the officer "just kicked his feet back out again." The kicks assertedly were directed at defendant's toes "and possibly it slipped off and he hit his shin once or twice." Then, while waiting for the homicide officers, the arresting officer "was pacing back and forth and he took out his sap stick and he held it up and asked Fred Stroble if he had ever seen one of these," and waved it under defendant's nose. Defendant said nothing and the officer put away the stick. A police car arrived, defendant was taken to Wilshire Station, and at 12:30 p. m. he was turned over to the homicide officers who were working on the case. They took defendant to the hall of justice. Instead of taking him before a magistrate immediately (the municipal court was on the 7th floor of the hall of justice) they took him to the district attorney's office (which was on the 6th floor of the same building). Defendant arrived at 1 p. m. and was questioned until 3 p. m. Before defendant entered the office a wire recorder had been put in operation, and the questioning was recorded. The questioning was also taken in shorthand by five stenographers, working in relays. There were present 19 representatives of the police department and the district attorney, but practically all the questioning was done by a single deputy district attorney. Defendant was offered water and cigarettes and was not physically mistreated during the questioning. Prior to the questioning he was not advised that he had any right to counsel or that his statements could be used against him. He did not ask

to communicate with his family or a lawyer, but he was not informed that, as will hereinafter appear, an attorney who had previously represented him was attempting to communicate with defendant.

(4, 5) We may assume that, as a matter of law under the circumstances shown, this first confession was the result of physical abuse or psychological torture or a combination of the two (cf. *Watts v. Indiana* (1949), 338 U.S. 49 [69 S.Ct. 1347, 93 L.Ed. 1801]; *Turner v. Pennsylvania* (1949), 338 U.S. 62 [69 S.Ct. 1352, 93 L.Ed. 1810]; *Harris v. South Carolina* (1949), 338 U.S. 68 [69 S.Ct. 1354, 1357, 93 L.Ed. 1815]; reversing convictions because of the admission of confessions elicited after intensive questioning by relays of officers for hours a day over periods of days). We may further assume that from the record it appears as a matter of law that defendant, although legally sane, was of somewhat weakened mentality (the result of arteriosclerosis and the excessive use of alcohol), and that this first confession was the result of terror indubitably following from the slap by the park foreman, the repeated acts of battery by the arresting officer when he searched defendant, and the presence of 19 law enforcement officials and five stenographers while defendant was questioned. The introduction in evidence of such a confession, if it were material at all, would offend the due process clause of the Fourteenth Amendment. (See *Ashcraft v. Tennessee* (1944), 322 U.S. 143, 154 [64 S.Ct. 921, 88 L.Ed. 1192]; *Haley v. Ohio* (1948), 332 U.S. 596, 599 [68 S.Ct. 302, 92 L.Ed. 224]; see also *Foster v. Illinois* (1947), 332 U.S. 134, 137 [67 S.Ct. 1716, 91 L.Ed. 1955]; *Gibbs v. Burke* (1949), 337 U.S. 773, 781 [69 S.Ct. 1247, 93 L.Ed. 1686].) But here the use of the first confession could not have affected the fairness of defendant's trial, because defendant thereafter made at least five confessions, of materially similar substance and unquestioned admissibility, which were put in evidence. It does not appear that the outcome of the trial would have differed if the first confession had been excluded, nor does it appear that the coercive influence surrounding the first confession continued to operate on the mind of defendant and induce subsequent confessions which were made after defendant had consulted with counsel and been taken before a magis-

trate (cf. *People v. Jones* (1944), 24 Cal. 2d 601, 609 [150 P.2d 801]).

Violation of Defendant's Rights to Be Taken Before a Magistrate and to Counsel Immediately After His Arrest

(6) Defendant's first two confessions (one made in the district attorney's office and one made shortly thereafter to the county jail physician) were obtained during a period when rights of defendant under the state Constitution and Penal Code were being flagrantly violated. At 1:43 p. m., while defendant was making his first confession, John D. Gray, an attorney at law, arrived at the district attorney's office and asked to see defendant. Mr. Gray was attorney of record for defendant in connection with the pending charges of contributing to the delinquency of minors. He came to see defendant at the request of defendant's son-in-law. All this was known to the deputy district attorneys and police [fol. 1327] officers who were working on the murder case. Nevertheless, the representatives of the People refused Gray's repeated requests and demands that he be allowed to see defendant. At 3 p. m., after defendant had confessed, he was taken from the office of the district attorney and was rushed past Mr. Gray, who was still waiting outside the office to see defendant. Officers drove defendant to the office of a physician, who gave defendant a physical and mental examination; in the course of the examination defendant made a second confession. Defendant was then taken to the county jail and there, at 9:30 p. m., Mr. Gray was finally allowed to talk with him for the first time since defendant's arrest. The next morning defendant was taken before a magistrate.

The above-described procedure was in violation of section 8 of article I of the state Constitution, which provides, "When a defendant is charged with the commission of a felony, by a written complaint subscribed under oath and on file in a court within the county in which the felony is triable, he shall, without unnecessary delay, be taken before a magistrate of such court. The magistrate shall immediately deliver to him a copy of the complaint, inform him of his right to the aid of counsel, ask him if he desires the

aid of counsel, and allow him a reasonable time to send for counsel." It apparently was also in violation of section 825 of the Penal Code, which provides, "The defendant must in all cases be taken before the magistrate without unnecessary delay, and, in any event, within two days after his arrest, excluding Sundays and holidays; and after such arrest, any attorney at law entitled to practice in the courts of record of California, may at the request of the prisoner or any relative of such prisoner, visit the person so arrested. Any officer having charge of the prisoner so arrested who willfully refuses or neglects to allow such attorney to visit a prisoner is guilty of a misdemeanor.¹ Any officer having a prisoner in charge, who refuses to allow any attorney to visit the prisoner when proper application is made therefor shall forfeit and pay to the party aggrieved the sum of five hundred dollars, to be recovered by action in any court of competent jurisdiction." (See also Pen. Code, § 848: "An officer making an arrest, in obedience to a warrant, must proceed with the person arrested as commanded by the warrant, or as provided by law"; § 814 [form of warrant: "you are . . . commanded forthwith to arrest the above-[fol. 1328] named C. D. and bring him before me . . . or . . . before the nearest or most accessible magistrate in this county"]; § 145 [willful delay in taking before magistrate is misdemeanor]; § 858 ["when the defendant is brought before a magistrate upon an arrest . . . on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings"].) It is apparent that here the delay in taking defendant before a magistrate (where defendant would have been advised of his right to counsel) was "unnecessary," for a municipal court open for business was located in the same building as the office where defendant was held and questioned, but defendant was not taken to such court; even after the questioning he was taken from the building for further examination by a physician. It is also apparent

¹ No showing has been made that any disciplinary action, or any criminal prosecution, has been instituted against any of the offending officials.

that defendant should have been allowed to see Mr. Gray, who was present at the request of defendant's son-in-law, a "relative of such prisoner" (Pen. Code, § 825). We disregard as a quibble the suggestion of the People that their officers had no duty to let Mr. Gray see defendant because Gray did not wish to advise or represent defendant but was present because of mere curiosity.

The conduct of the officers, as above related, was patently illegal. Its illegality is not lessened by argument that similar conduct is not unusual or that such conduct makes the work of the police and the district attorney easier. In the present case the conduct cannot even be explained as an expedient born of desperation to meet an imperative exigency. (Cf. the situations described in the concurring and dissenting opinion of Mr. Justice Jackson in *Watts v. Indiana* (1949), *supra*, p. 58 of 338 U.S. ["no one suggests that any course held promise of solution of these murders other than to take the suspect into custody for questioning. The alternative was to close the books on the crime and forget it, with the suspect at large"]; and in the majority opinion of Mr. Justice Black in *Upshaw v. United States* (1948), 335 U.S. 410, 414 [69 S.Ct. 170, 93 L.Ed. 100] ["The arresting officer himself stated that petitioner was not carried before a magistrate [more promptly] . . . because the officer thought there was 'not a sufficient case' for the court to hold him"]; see also the majority opinion of Mr. Justice Douglas in *McDonald v. United States* (1948), 335 U.S. 451, 456 [69 P. 191, 93 L.Ed. 153].) We can only conclude that the representatives of the People, when they unreasonably and illegally refused to permit Mr. Gray to see Stroble, yielded in some degree to the general hysteria which was [fol. 1329] manifest by such symptoms as the slapping of Stroble by the park foreman, the kicking of him by the arresting officer, and by popular demands for more federal legislation against "sex crimes."

(7) Theoretically, taking defendant promptly before a magistrate and permitting Mr. Gray to consult with defendant immediately upon his arrival at the district attorney's office, might have been of considerable importance to defendant on his subsequent trial. If defendant had been confessing reluctantly, it would have been particularly im-

portant to him to know that he could remain silent; if he had been confessing in extravagant and exaggerated terms, it would have been particularly important for him to know that his words could be used against him. As the situation actually developed, however, it became obvious that defendant did not wish, or was not able to remain silent. After he had consulted with Mr. Gray and with attorneys from the public defender's office, defendant continued repeatedly to make detailed confessions. Each of the confessions appears to be an attempt by defendant, to the best of his ability, to recount the entire truth as to the killing, including his state of mind at the time. In these circumstances, the violation of his constitutional and statutory rights immediately after his arrest appears not to have affected the outcome of defendant's trial. The situation is not like that in such cases as *People v. Sarazzawski* (1945), 27 Cal.2d 7, 11 [161 P.2d 934], and cases there cited, where judgments of conviction were reversed because of fundamental defects in the conduct of the trial, on the theory that, even though it appeared that the defendant was guilty, there was a miscarriage of justice because of the denial to him of fair, orderly trial procedure.

*Asserted Deprivation of Effective Representation by
Counsel at the Preliminary Hearing*

(8) On Friday, November 18, the day after defendant's arrest, he was taken before the municipal court, arraigned, and a deputy city public defender was appointed to represent him. The municipal court fixed Monday, November 21, as the day for preliminary hearing, rather than November 22, as requested by the deputy. Defendant contends that his representation at the preliminary hearing was only pro forma because his counsel was not allowed sufficient time to prepare. However, defendant does not point out any respect in which he was prejudiced and, furthermore, the deputy, when he appeared on November 21, stated that he was ready and did not request a continuance.

[fol. 1330] *Trial Court's Refusal to Permit Voir Dire Examination of Juror at Beginning of Insanity Section of the Trial*

(9) The original jury returned to try the issue of defendant's sanity. Deputy Public Defender Al Mathews, representing defendant, then asked permission to further examine a juror on voir dire. The trial court refused permission. Mr. Matthews began an offer to prove that the juror in question had falsely answered, on the original voir dire examination, a question as to his occupation. The trial court interrupted the offer and asked that counsel discuss the matter in chambers. The greater part of what took place in chambers was not made a part of the record on appeal which was first prepared. Defendant's present counsel (who did not represent defendant during the trial) argued in his opening brief that the trial judge, by refusing to permit further examination of the juror, prevented (or may have prevented) Mr. Mathews from showing facts which had developed since the original voir dire examination and which would disqualify the juror. On motion of defendant the record on appeal has since been augmented by inclusion of the discussion in chambers. It now appears from the record that after the first stage of the trial had begun the matters concerning which Mr. Mathews wished to examine the juror had been brought to the attention of the trial judge and counsel by an informer; counsel for the defendant and for the People had agreed that if there was any question as to the juror's disqualification an alternate juror would be substituted; investigation by representatives of the district attorney and public defender disclosed that the informer's charges against the juror were unfounded; no objection to the juror was made until after the jury had found defendant guilty; then Mr. Mathews, in a voice which was loud enough to be heard by the jurors, raised the question of the juror's qualification. It thus appears from the augmented record that defendant's claim that he was prevented from disclosing possible bias on the part of the juror is without merit.

*Assorted Deprivation of Defendant's Right to Counsel of
His Choice on Trial of the Issues of Insanity*

(10, 11a) During the trial of the issue of not guilty Deputies Mathews and Hill of the public defender's office handled the defense in the courtroom. Only Mr. Mathews had interviewed defendant, but Mr. Hill had been present and active on defendant's behalf at all times during the trial. Public Defender Ellery Cuff had not met defendant or appeared for him in court, but he was familiar with the case, having [fol. 1331] read the daily transcript and consulted with and advised Mr. Mathews and Mr. Hill and interviewed witnesses during the trial. It appears from the record of the above mentioned discussion in chambers at the beginning of the insanity stage of the trial that the trial judge believed that Mr. Mathews acted improperly in raising the question of the juror's qualification in the presence of the jury and also believed that certain prior conduct of Mr. Mathews (not in trying the case but in preparing the defense and in releasing information about it) was improper; therefore the trial judge asked Public Defender Cuff "to attend upon the remainder of this trial . . . to see that this trial is conducted in a manner in which I believe trials should be conducted." The transcript of this discussion further shows that there had been previous discussions concerning Mr. Mathews' conduct, the substance of which need not here be set out. It is sufficient to note that these matters were never discussed in the presence of the jury and the judge's disapproval of Mr. Mathews' conduct was not expressed before them, so that the triers of fact could not have been influenced against defendant by such disapproval. A recess followed the discussion in chambers at the beginning of the trial of the sanity issue. At the beginning of the recess (as appears from testimony on defendant's motion for new trial) Mr. Mathews introduced Mr. Cuff to Mr. Stroble. Thereafter Mr. Cuff discussed waiver of the jury with Mr. Mathews and Mr. Hill and also asked the advice of Judge William B. Neeley, who had had long experience as public defender. At about 10 minutes before 2 p. m. Mr. Cuff and Mr. Bliss visited defendant in the prisoner's room, near the courtroom. Mr. Cuff told defendant that on a jury trial of the insanity issue evidence of details of all other

instances of his molestation of children could and probably would be presented by the prosecution, the possible harmful effect of such evidence was discussed, and defendant said, "I have had enough of that jury. Get rid of them." He repeated this at least three times. When court reconvened at 2 p. m. Mr. Mathews was present but silent. Mr. Hill, who had not talked with defendant, said "Information has been conveyed to me that it is the desire of the defendant . . . to withdraw the case on the . . . plea of not guilty by reason of insanity, waiving his right to a trial by jury . . . Is that correct, Mr. Stroble?" Defendant replied, "That is correct." The question whether defendant waived a jury trial, and defendant's affirmative answer, were repeated. Counsel joined in the waiver, and stipulated that the ques- [fol. 1332] tion be submitted on the evidence already in the case and the written reports of six physicians who had examined defendant.

Defendant contends that his right to counsel of his choice was violated because Mr. Mathews, the only public defender whom defendant had come to know personally and in whom defendant had confidence, did not interview defendant as to the waiver of jury and actively represent defendant on the trial of the sanity issue. Defendant's right to counsel does not include the right to be represented by a particular deputy public defender. (See *People v. Manchetti* (1946), 29 Cal.2d 452, 458 [175 P.2d 533].) The record sustains defendant's assertions that Mr. Mathews was required to retire from the active representation of defendant because Mr. Cuff and the trial judge disapproved of certain things he had done in connection with the case; it does not sustain defendant's charge that thereafter he was not properly and adequately represented. This will appear from the subsequent discussion of defendant's contentions that two important steps taken by his counsel on the trial of the issue of sanity were ineffective.

Asserted Invalidity of Defendant's Waiver of Jury Trial

(11b) Defendant argues that his waiver of a jury at the insanity stage of the trial was ineffective because he did not understand the meaning of "waiver of jury." On the motion for new trial defendant, Mr. Cuff, and Mr. Bliss, an investi-

gator for the public defender's office, testified to their conference which resulted in the waiver of a jury. There is a sharp conflict between defendant's testimony and that of Mr. Cuff and Mr. Bliss as to what was said. Defendant relies upon his own testimony that he did not understand the meaning of "waiver of jury" and it was not explained to him; that he did not say "Get rid of them"; that "I didn't even know that could be done. I always had that idea that a jury and counsel should be there from the beginning to the end." We accept the determination of the trial judge, who saw and heard the witnesses and who announced that he believed the testimony of the public officials and disbelieved defendant.

In this connection defendant also calls attention to the statement made of Mr. Cuff, made in chambers preceding his conference with defendant, that he had "had little or no contact with Mr. Stroble. It would be difficult for me to handle——" However, Mr. Cuff was familiar with the development of the case and, particularly after conferring with Deputies Hill and Mathews, who had "handled" it throughout, was in a position to intelligently advise defendant of the probable course of a jury trial of the sanity issue and the meaning of "waiver."

Failure to Examine Witnesses on the Trial of the Sanity Issue

(12) As previously stated, defendant by stipulation submitted the issue of sanity on the testimony adduced at the trial of the not guilty issue and on the written reports of six physicians who had examined defendant. Defendant now argues that this procedure, in effect, deprived him of any trial on the issue of his sanity because no evidence that defendant was legally insane had been introduced on the trial of the issue of not guilty and because the doctors' reports were hearsay. However, defendant does not suggest that he could have produced evidence of insanity under the right-and-wrong test if a different procedure had been followed. It does not appear that any harm was done to defendant's cause by the manner in which the sanity issue was submitted, nor that such submission shows any lack of wisdom or preparedness on the part of defendant's counsel.

Conclusion

Defendant has pointed out no instance of misconduct or error which appears to have affected the result of the trial. Misconduct which did not make the trial itself unfair, nor amount to a breach of due process, is not ground for reversal of a conviction. Therefore, the judgment and order appealed from are affirmed.

Gibson, C. J., Shenk, J., and Traynor, J., concurred. Edmonds, J., Carter, J. and Spence J. concurred in the judgment.

[fols. 1334-1335] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 1336] No.

(Title omitted)

IN THE SUPREME COURT OF CALIFORNIA

(File endorsement omitted)

Order Denying Rehearing —filed February 15, 1951
Appellant's petition for rehearing denied.

SHENK

Acting Chief Justice

[fol. 1337] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 1338-1339] SUPREME COURT OF THE UNITED STATES

No. 5, Misc., October Term, 1951

(Title omitted)

Order Granting Certiorari—October 8, 1951

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 373.

[fol. 1340] IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1951

(Title omitted)

Stipulation—filed December 3, 1951

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel undersigned, that the following portions of the record on appeal should be printed on behalf of petitioner:

1. All the testimony of the witness W. H. Brennan, commencing on page 129 to and including page 136, and testimony commencing on page 783 to and including page 786, line 17, Reporter's Transcript.

2. All the testimony of the witness Thad F. Brown, commencing on page 137 to and including page 156, and testimony commencing on page 166 to and including page 265, Reporter's Transcript.

3. All the testimony of the witness Arnold W. Carlson, commencing on page 123 to and including page 129, Reporter's Transcript.

4. All the testimony of the witness Dr. Marcus Crahan, commencing on page 378 to and including page 420, Reporter's Transcript.

5. All the testimony of the witness John D. Gray, commencing on page 420 to and including page 443, Reporter's Transcript.

6. All the testimony of the witness William Martin Miller, commencing on page 156 to and including page 166, Reporter's Transcript.

7. All the testimony of the witness John Barnes, commencing on page 775 to and including page 782, Reporter's Transcript.

8. All the testimony of the witness J. A. Donahoe, commencing on page 789 to and including page 797, line 10, Reporter's Transcript.

9. All the testimony of the witness S. Ernest Roll, commencing on page 769 to and including page 775, Reporter's Transcript.

10. All the testimony of the witness M. E. Tullock, commencing on page 782 to and including page 783, Reporter's Transcript.

11. All proceedings on the motion under Section 995, Penal Code, commencing on page 1065 to and including page 1107, Reporter's Transcript.

12. All the questions and answers of the juror August Kalbfuss on voir dire, commencing on page 1108 to and including page 1115, Reporter's Transcript.

13. All proceedings including the proceedings on the [fol. 1342] motion for new trial, commencing on page 1139 to and including page 1247, Reporter's Transcript.

14. The entire transcript entitled "Proceedings to Augment Transcript on Appeal."

15. Reporter's Partial Transcript of argument of Deputy Attorney General Richards pages one to twenty.

It is further stipulated and agreed that the following portions of the record on appeal should be printed on behalf of respondent:

1. The testimony of the witness W. H. Brennan, commencing on page 55 to and including page 66, line 9, Reporter's Transcript.

2. The testimony of the witness Lillian Glucoft, com-

commencing on page 30 to and including page 33, Reporter's Transcript.

3. The testimony of the witness Sylvia Hausman, commencing on page 14 to and including page 28, Reporter's Transcript.

4. The testimony of the witness Dr. F. D. Newbarr, commencing on page 67 to and including page 106, Reporter's Transcript.

5. The testimony of the witness Ray H. Pinker, commencing on page 110 to and including page 120, line 17, Reporter's Transcript.

6. That portion of the testimony of the witness Dr. E. E. McNeil, commencing on page 800 to and including page 801, line 23, and testimony commencing on page 810, line 13, to and including page 813, line 22, Reporter's Transcript.

[fol. 1343] 7. That portion of the testimony of the witness Dr. Victor Parkin called by the petitioner, commencing on page 861, line 23, to and including page 867, line 13, Reporter's Transcript.

8. That portion of the testimony of the witness Dr. Robert E. Wyers, commencing on page 903, line 19, to and including line 24, and testimony commencing on page 910, line 22, to and including page 913, line 6, Reporter's Transcript.

9. That portion of the testimony of the witness Dr. Jacob P. Frostig called by petitioner, commencing on page 479, line 1 to line 3, inclusive, and testimony commencing on page 491, line 19, to and including page 493, line 5, Reporter's Transcript.

10. That portion of the testimony of the witness David E. Brownson, commencing on page 266, line 1, to and including page 274, Reporter's Transcript.

11. That portion of the argument of defense counsel, commencing on page 1115-111, line 4 to line 13, inclusive, Reporter's Transcript.

12. The instructions to the jury found on pages 37 to 41, inclusive, Clerk's Transcript.

12a. That portion of the testimony of the witness Carl G. G. Palmberg, commencing on page 529, line 1, to and including line 11; that portion of the testimony commencing

on page 598, line 21, to and including page 611, line 16, Reporter's Transcript.

[fols. 1344-1345] 13. All proceedings including the medical reports, commencing on page 996 to and including page 1064, Reporter's Transcript.

EDMUND G. BROWN

Attorney General of the State of California

By FRANK W. RICHARDS

Deputy Attorney General

S. ERNEST ROLL

District Attorney of Los Angeles County

By ADOLPH ALEXANDER

Assistant Chief Deputy District Attorney

Attorneys for Respondent

JOHN D. GRAY

A. L. WIRIN

FRED OKRAND

By JOHN D. GRAY

Attorneys for Petitioner

(9237)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 373

FRED STROBLE,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF
CALIFORNIA

BRIEF FOR PETITIONER

JOHN D. GRAY,

A. L. WIRIN,

FRED OKRAND,

CLORE WARNE,

Counsel for Petitioner.

MAXWELL E. GREENBERG,

GORDON STULBERG,

ROBERT I. WEIL,

EDMUND W. COOKE,

LOREN MILLER,

Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 373

FRED STORBLE,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

BRIEF FOR PETITIONER

The Opinion Below

The Opinion of the California Supreme Court was filed on January 19, 1951. It is reported in 36 Cal. (2d) 615, 226 P. (2d) 330 (1951) (R. 407). The Opinion is separately set forth in the record.

Jurisdiction

The jurisdiction of this Court was invoked under 28 U. S. C. 1257 (3); the Petition for Writ of Certiorari was granted on October 8, 1951 (343 U. S. —).

Statement of the Case.¹

Petitioner Fred Stroble is a 68-year-old male of weak and impaired mentality² (R. 410-411). On November 14, 1949, the date upon which Stroble is alleged to have killed a six-year-old child, there was outstanding a warrant for his arrest on a misdemeanor morals charge. On November 14, 1949, petitioner disappeared, and one of the most publicized and extensive manhunts in California history was begun.³ The hunt continued until petitioner was identified in a bar in Los Angeles by a private citizen, William Martin Miller (R. 75). Miller summoned aid in the person of a uniformed police officer, Arnold W. Carlson (R. 75). Petitioner was then taken to the office of the park foreman in Pershing Square (a park in downtown Los Angeles). Petitioner was questioned regarding his guilt (R. 80); he evidenced a reluctance to speak, and he was then threatened, slapped, kicked, and conditioned for future "interrogation"³ (R. 75-78). In company with Carlson and some officers from the homicide bureau of the Los Angeles Police Department, petitioner was taken to the Wilshire Police Station, where he was met by Sergeant W. H. Brennan of the Wilshire Detective Bureau, which officer had on a prior day obtained a warrant for the arrest of petitioner. This warrant was still valid and in effect at the time of arrest. (R. 60). Officer Brennan, in violation of the clear mandate of the warrant, took petitioner to the office of the District Attorney of Los Angeles County, on the sixth floor of the

¹ The opinion of the California Supreme Court does not set out the facts of this case in either chronological or sequential order. Rather, the facts are related in individual groupings as the court disposes of unrelated questions of law concerning these facts. Petitioner herein has endeavored to place the facts in the order of their occurrence, with supplemental references to the California Supreme Court opinion where such collaboration was felt necessary.

² California Supreme Court Opinion, R. 416.

³ California Supreme Court Opinion, R. 415.

Hall of Justice, where he was conducted into the office of William E. Simpson, District Attorney.⁴ (R. 60). It was conceded by the representatives of the People, that a magistrate was available on the floor above the District Attorney's office and that there was a court open and available to which Stroble could have been taken and advised of his rights, before he was taken to the office of the District Attorney (R. 270).

Here in the presence of 19 members of the District Attorney's office and the Los Angeles Police Department, and a number of stenographers, Stroble was interrogated for a period of approximately two hours (R. 62-63, 272). During and after the completion of this interrogation of petitioner, releases were given to the press by the District Attorney, Mr. Simpson, which statements were given widespread publicity by the press. (Exhibit "AA," R. 361)⁵ During this period of interrogation Attorney John D. Gray, who had previously represented petitioner in a misdemeanor morals case and who was known to the District Attorney as petitioner's attorney, demanded the right to communicate with Stroble at the request of his family; for the stated purpose of consulting with him and advising him of his constitutional rights.⁶ Gray was at that time in the anteroom of the Dis-

⁴ California Penal Code, Section 814 prescribes the form of the warrant: "You are . . . commanded forthwith to arrest the above named C. D. and bring him before me—or . . . before the nearest or most accessible magistrate in this County."

⁵ It is the understanding of counsel that these exhibits have been transmitted by the Clerk of the California Supreme Court to the Clerk of the United States Supreme Court.

⁶ This right is guaranteed to a defendant by California Penal Code Sec. 825, which reads: "The defendant must in all cases be taken before the magistrate without unnecessary delay, and, in any event, within two days after his arrest, excluding Sundays and holidays; and, after such arrest, any attorney at law entitled to practice in the courts of record of California may at the request of the prisoner or any relative of such prisoner, visit the person so arrested. Any officer having charge of the prisoner, so arrested who willfully refuses or neglects to allow such attorney to visit a prisoner is guilty of a misdemeanor . . ."

district Attorney's office, where petitioner was being questioned (R. 176-180). The demand to see Stroble was unequivocally denied; the attorney was told by a high ranking police officer, "Why don't you go on home and come back tomorrow, and let's do this thing right?" (R. 178). Approximately one and one-half hours later petitioner was rushed past this still waiting attorney (R. 179) and taken to the office of Marcus Crahan, physician in charge of the Los Angeles County Jail Hospital, and subjected to a complete physical examination, and was again interrogated at length by Dr. Crahan (R. 148). Some time thereafter petitioner was taken to the Los Angeles County Jail, where at approximately 9:30 P.M. of that evening his attorney, John D. Gray, was first permitted to see him⁷ (R. 180).

The following day, Friday, November 18, 1949, at 10:00 A.M., petitioner was arraigned (R. 275); the City Public Defender was appointed as his counsel (R. 275), and on Monday, November 21, 1949, the case was called for preliminary examination in Division 4 of the Municipal Court of the City of Los Angeles (R. 276). Petitioner was bound over for trial in the Superior Court of the State of California in and for the County of Los Angeles. Petitioner was arraigned in the last-named court, the *County* Public Defender appointed as his counsel, and Deputy Public Defenders Matthews and Hill assigned to the case.

The case came on for trial, before a jury, on January 3, 1950, and was tried until January 18, 1950, at which time the jury commenced its deliberations. On January 19, 1950, the jury found petitioner guilty of murder in the first degree without recommendation, and the case was adjourned until the following day for the commencement of the sanity aspect of the trial.

⁷ California Supreme Court Opinion, p. 417.

At the commencement of that portion of the trial bearing on the issue of Stroble's sanity,⁸ Deputy Public Defender Matthews, proceeding alone (R. 223), in the absence of Deputy Hill, sought to interrogate one of the jurors on voir dire, concerning certain suspected improper conduct on the part of a juror (R. 222-224). The trial judge made and sustained his own objection, summoned Matthews' superior, held a long session in chambers, criticized Matthews' conduct, and removed Matthews from further participation in the trial of the case,⁹ as far as any effective aid to Stroble is concerned (R. 371-394). Shortly thereafter petitioner was advised by Matthews' superior, Public Defender Ellery Cuff, to whom Stroble had just been introduced, to waive the jury and to submit the matter to the trial judge for decision. This was done without consulting Matthews (R. 336), who had been Stroble's counsel throughout the case. Mr. Hill, who had never spoken to petitioner, reappeared in the case and entered into certain stipulations with the prosecution (R. 225-228), and petitioner was, without the taking of any evidence, summarily found sane by the Court (R. 227). The time for sentence was set for January 27, 1950, at 9:00 A. M. (R. 228). On January 22, 1950, petitioner substituted John D. Gray as his attorney in the place of the Public Defender (R. 301).

Motions for new trial, arrest of judgment, to dismiss the proceedings for lack of jurisdiction, and to set aside the waiver of the jury in the trial of the issue of Stroble's

⁸ California Penal Code Section 1026 provides for a trial divided into two distinct parts, when a criminal pleads "Not guilty," and "Not guilty by reason of insanity." In that case, the defendant is tried first on the issue of guilt, and in that portion of the trial is conclusively presumed sane. If he is found guilty, he is then tried on the issue of sanity. That portion of the trial on the issue of sanity may be before the original jury or a new one, in the discretion of the court.

⁹ California Supreme Court Opinion, R. 423.

sanity, were denied on February 6, 1950, and the defendant sentenced to death. Thereupon an appeal was undertaken automatically to the Supreme Court of the State of California pursuant to California Penal Code Section 1239. The judgment of the trial court was affirmed on January 19, 1951, and a petition for rehearing denied on February 15, 1951.

Specification of Errors

1. Petitioner was denied Due Process by the Supreme Court of California when it failed to reverse the conviction because the trial was unfairly prejudiced by inflammatory newspaper reports inspired by the District Attorney.

2. Petitioner was denied Due Process by the Supreme Court of California when it failed to reverse the conviction based, in part, on an admittedly coerced confession.

3. Petitioner was denied Due Process by the Supreme Court of California when it failed to reverse the conviction because petitioner had been effectively deprived of counsel in the course of the trial, at the behest of the trial judge.

4. Petitioner was denied Due Process by the Supreme Court of California when it failed to hold that the following combination of prejudicial and illegal circumstances:

- a) Unwarranted delay in arraignment;
- b) Refusal to permit counsel to consult defendant;
- c) Deprivation of counsel of petitioner's choice at a critical point in the trial, at the instigation of the trial judge (independently a violation of Due Process);
- d) Admission of a coerced confession into evidence (independently a violation of Due Process);
- e) A lynch atmosphere created by newspaper stories "planted" by publicity-seeking prosecuting officers (independently a violation of Due Process);

deprived petitioner of a fair and impartial trial, and denied him Due Process.

Summary of Argument

This Court is faced once again with the necessity of reversing a State court conviction because of wholly improper methods used by the prosecution to obtain that conviction. Certain of the contentions raised here, such as those concerning the use of a coerced confession and the deprivation of counsel, are familiar and can be fit into the pattern of many previously decided cases.

The admission of an admittedly coerced confession requires reversal of a conviction based upon it. The California Supreme Court "assumed as a matter of law under the circumstances shown" (R. 416) that the petitioner's confession was coerced. Yet it chose to weigh the evidence embodied in the transcript of testimony and to evaluate its effect on the judge and jury. The California court concluded that the introduction of subsequent confessions, which were not coerced, repaired the damage done to petitioner's case by the introduction of the confession obtained under coercive circumstances. Petitioner contends that the introduction of a coerced confession must be considered error sufficiently prejudicial to require reversal.

Petitioner was also effectively deprived of counsel. The Public Defender¹⁰ was appointed to represent Stroble and a deputy from his office assigned to act as Stroble's counsel. In the course of the bifurcated trial provided by California criminal procedure for defendants who tender an issue of not guilty by reason of insanity, the trial judge successfully importuned the Public Defender to withdraw the deputy who had represented petitioner and, in effect, to substitute another deputy. Thus, at the close of the trial of guilt or

¹⁰ Section 27700 *et seq.* of the California Government Code authorizes counties to establish an office of Public Defender to represent indigent persons accused of crime, among other duties. Such an office has been created for Los Angeles County and has been in existence since 1914.

innocence and just before the trial of the issue of insanity, this new counsel undertook to advise petitioner without thorough preparation, or knowledge of the case or the testimony in the first portion of the trial. Petitioner was thereby deprived of effective counsel at a key point in the trial and is entitled to a new trial wherein he will be zealously represented by a continuing prepared, effective advisor throughout.

Petitioner's other contentions are more inchoate and less familiar, but at least of equally fundamental legal and social import. Petitioner asserts that the newspaper, radio and television hue and cry incident to his arrest and trial, salient portions of which were instigated by the prosecution, deprived him of a fair and impartial trial. It is contended that recent developments in the techniques and law of mass communication have created a need for the recognition in these contexts of certain long established legal principles. An accused has always been entitled to keep evidence obtained by coercion from the jury *during trial*. Should he not be permitted to keep the same evidence from the jury (or all potential jurors) *before the trial*? Similarly, unduly prejudicial statements have long been forbidden to the prosecution in the courtroom. But jurors whose emotions and prejudices are evoked by prosecution-planted newspaper stories *before the trial* cannot acquire objectivity by entering the jury box. Petitioner could not have obtained a fair trial from a jury selected from individuals necessarily exposed to the merciless, inflammatory and deliberate publicity campaign waged against him.

Finally, this Court is asked also to recognize that law "enforcement" officers have become learned in the law. The police have carefully studied and learned the lessons of recent Supreme Court decisions in the field of civil liberties. These sophisticated and well-meaning officers then try to

stay within the broad confines of the latest constitutional decisions, with bland disregard of the lesser rights of defendants thought to be assured only by statute and state sanctions. We squarely challenge the view that a fair trial is granted and Due Process followed when a multitude of "lesser" transgressions are knowingly committed by over-anxious and over-ambitious prosecutors. We contend that this record reveals a fatal combination of illegal procedures, even if no one of them justifies reversal in itself.

ARGUMENT

I. Defendant Was Convicted Without Due Process Because of the Inflammatory Newspaper Reports Based in Large Part on Information and Prejudicial Statements Furnished by the District Attorney Before the Trial.

In recent years, this Court has gone far in protecting the right of newspapers to make comment—"vitriolic, scurrilous or erroneous"¹¹—concerning pending litigation, without thereby risking conviction of contempt of court. (*Bridges v. California*, 314 U.S. 252 (1941); *Pennekamp v. Florida*, 328 U.S. 331, 370 (1946); *Craig v. Harney*, 331 U.S. 367 (1947).) Indeed, there is room for disagreement by reasonable men concerning the wisdom and correctness of the above cited cases.¹² But these cases must be accepted as stating the law, and this case involves no challenge to the wide latitude therein given to newspapers in their treatment of controversial and other newsworthy litigation.

Rather, petitioner urges that this Court, having assured constitutional protection for the power of the press to re-

¹¹ *Pennekamp v. Florida*, 328 U.S. 331, 370 (1946) (Concurring Opinion of Justice Murphy).

¹² Chief Justice Stone and Justices Roberts, Frankfurter and Byrnes dissented in *Bridges v. California*; Chief Justice Vinson and Justices Frankfurter and Jackson dissented in *Craig v. Harney*.

port and comment on litigation, now must recognize and reaffirm the *correlative* constitutional right of individual litigants, particularly defendants charged with crime, to be protected from the results of abuse of that power. The concept of Due Process is centered on the institution of fair and impartial trial. This Court must now recognize that the media of mass communication, in the exercise of their fundamental freedom to disseminate the news, can infringe on the right of an accused defendant to a fair and impartial trial. In this case, the newspapers were led into that error by the publicity-seeking prosecution.

Judges cannot summarily silence comment concerning litigation, absent a "serious and imminent threat to the administration of justice".¹³ But this rule, based on the guaranties of the First Amendment, does not mean that a criminal trial can be made a prosecution by public clamor, and the Fourteenth Amendment vitiated.

In his concurring opinion in *Pennekamp v. Florida*, 328 U. S. 331 (1946), Mr. Justice Frankfurter has stated with effectiveness which requires quotation, the general considerations concerning discussion of pending litigation in publicity media. His statement of position regarding "trial by newspaper" is adopted in aid of argument here:

" 'Trial by newspaper', like all catch phrases, may be loosely used but it summarizes an evil influence upon the administration of criminal justice in this country . . .

"Certain features of American criminal justice have long been diagnosed by those best qualified to judge as serious and remediable defects. On the other hand, some mischievous accompaniments of our system have been so pervasive that they are too often regarded as part of the exuberant American spirit. Thus, 'trial by newspapers' has sometimes been explained as a con-

¹³ *Craig v. Harney*, 331 U.S. 367, 373 (1947).

cession to our peculiar interest in criminal trials. Such interest might be an innocent enough pastime were it not for the fact that the stimulation of such curiosity by the press and the response to such stimulated interest have not failed to cause grievous tragedies committed under the forms of law. Of course trials must be public and the public have a deep interest in trials. The public's legitimate interest, however, precludes distortion of what goes on inside the courtroom, dissemination of matters that do not come before the court, or other trafficking with truth intended to influence proceedings or inevitably calculated to disturb the course of justice. The atmosphere in a courtroom may be subtly influenced from without.

"The administration of law, particularly that of the criminal law, normally operates in an environment that is not universal or even general but individual. The distinctive circumstances of a particular case determine whether law is fairly administered in that case, through a disinterested judgment on the basis of what has been formerly presented in the courtroom on explicit considerations, instead of being subjected to extraneous factors psychologically calculated to disturb the exercise of an impartial and equitable judgment. . . .

" . . . It is a condition of that [judicial] function—in dispensable for a free society—that in a particular controversy pending before a court and awaiting judgment, human beings, however strong, should not be torn from their moorings of impartiality by the undertow of extraneous influence. In securing freedom of speech, the Constitution hardly meant to create the right to influence judges or juries. That is no more freedom of speech than stuffing a ballot box is an exercise of the right to vote."

(328 U.S. at 359-366).¹⁴

¹⁴ Cf. The challenging comments by Justice Frankfurter in his opinion respecting the denial of petition for writ of *certiorari* in *Magyland v. Baltimore Radio Show*, 338 U.S. 912 [1950].

This case involves not only the factor of inflammatory, prejudice-arousing newspaper reports, but also the furnishing to the papers of the detailed basis of those reports by the Chief Prosecuting Officer, the District Attorney. In another opinion delineating the effect of unwarranted newspaper publicity, Mr. Justice Jackson for his concurring opinion in *Shepherd v. Florida*, 341 U. S. 50 (1951), joined by Mr. Justice Frankfurter, has commented with respect to a similar situation:

"It is hard to imagine a more prejudicial influence than a press release by the officer of the court charged with defendants' custody stating that they had confessed, and here just such a statement, unsworn to, unseen, uncross-examined and uncontradicted, was conveyed by the press to the jury." (341 U. S., at 52.)

Cf. *Viereck v. U. S.*, 318 U. S. 236, 248 (1943).¹⁵

¹⁵ In this case, Chief Justice Stone cites and quotes from *Berger v. U. S.*, 295 U. S. 78, 88 (1935), in which Mr. Justice Sutherland eloquently defined the position of the prosecutor in a criminal case:

"The United States Attorney [or other prosecuting official] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one . . .

"Moreover, we have not here a case where the misconduct of the prosecuting attorney was slight or confined to a single instance, but one where such misconduct was pronounced and persistent, with a probable cumulative effect upon the jury which cannot be disregarded as inconsequential. A new trial must be awarded. Compare *New York C.R. Co. v. Johnson*, 279 U. S. 310, 316-318, 73 L. ed. 706, 709, 710, 49 S. Ct. 300."

This type of prosecution-instigated newspaper discussion of pending litigation has also been condemned by the organized Bar.¹⁶

In most cases, it would be very difficult to determine the point at which, in the absence of a concrete showing of actual bias and prejudice, the newspaper accounts of a particular criminal matter would deprive the defendant of a fair trial. Many factors would be relevant; included would be: The emotional tone of the reports; the circulation of the papers; the "treatment" of the stories by the press; the nature of the crime; the time intervening between the reportage and the trial. Even though such a decision is a matter of degree, this Court could properly conclude that Due Process had not been given (cf. *Moore v. Dempsey*, 261 U. S. 36 (1923); *Craig v. Harney*, 331 U. S. 367 (1947).)¹⁷

But when the prosecutor here deliberately encouraged and pandered to the bloodthirsty, sex-obsessed public prints, the trial descended to the level of the Roman Circus. The Los Angeles Times reported the period of Stroble's questioning following arrest, in part, as follows ("OC 'Home' Edition, November 18, 1949, page 2, column 4, Exhibit 'AA'):

"CONFESSION SCENE STEEPED IN DRAMA

FBI Men Attend

"The drama began at 12:40 p. m. when Stroble, handcuffed, was hustled up a back elevator and brought down the marble floored and marble walled corridor

¹⁶ See in addition to the numerous authorities cited by Mr. Justice Frankfurter in his concurring opinion in *Pennick v. Florida*, *supra*, Canon No. 20 of the Canons of Legal Ethics of the American Bar Association.

¹⁷ As Justice Reed stated in the *Craig* case, at p. 375: "Conceivably, a plan of reporting on a case could be so designed and executed as to poison the public mind, to cause a march on the court house, or otherwise so disturb the delicate balance in a highly wrought situation as to imperil the fair and orderly functioning of the judicial process."

when he arrived from Wilshire police station. Inside the 'corner pocket,' the stage had been set. Four FBI agents, who have a complaint against Stroble for illegal flight, lurked in the background.

"Stroble came through perhaps 300 spectators in the corridor. He looked on sullenly while literally scores of newspapermen's flashbulbs popped. He wore a gray suit, a dull green shirt, a purplish tie.

"Once inside the room, Dep. Dist. Atty. Henderson began the questioning slowly but relentlessly. Every half hour, Dist. Atty. Simpson came out a back door to tell the progress.

Defendant Hesitant

"At about 2:15 p. m., Simpson said, 'We're getting up to the crucial point. He's a little bit hesitant. I think he is going to come through. I don't think there's any doubt about it.'

"Simpson, white-haired, was trembling.

"Television news cameras were trained on the corridor. Radio broadcasts were made a few feet away. All telephones in offices for 50 feet in each direction were commandeered by newsmen.

Death Described

"Minutes ticked off. Simpson emerged again. He told in words of almost Biblical simplicity of Stroble's confession—the attempted molesting, the choking, the dragging, the ice-pick stabbing, the ax-bludgeoning and finally the coup de grace, the knifing at the back of the skull which he had learned while watching a bullfight.

"Inside the 'corner pocket' stenographers took notes in five-minute relays and a recording machine also was used.

"'I don't know how long this will continue,' Simpson said. 'We want to be sure. We want to be sure.'

The less conservative press, like the Hearst-owned Los Angeles Herald Express, printed the confession, and head-

lined the capture of Stroble in letters two and three-eighths inches high and three-quarters of an inch wide (Los Angeles Herald Express, Night Final, November 17, 1949). Nor was the coverage of the Stroble case a brief interlude lost in the mass of the news and without the mnemonic advantages of constant repetition over a period of time. The following night the Herald Express announced in headlines of a size reserved by the New York Times for the Second Coming,

"LYNCH HIM! HOWLS CROWD,
AS STROBLE GOES TO COURT"

The same paper had dubbed the petitioner "The Werewolf" many days before his capture and many weeks before his conviction.

Nor was the journalistic vilification of Stroble ended by his arrest. The night edition of the Herald Express of November 21, 1949, carried on its front page the following account, with the subhead "Grisly Details Revealed":

"The complete Answer and Question text of Werewolf-slayer Fred Stroble's confession to the fiendish murder of six-year-old Linda Joyce Glucoft was released by District Attorney William E. Simpson today; *[followed by the complete text of the confession]*."

Nor did petitioner escape the attention of the Los Angeles Examiner, or the Los Angeles Daily News, the other major morning and evening newspapers, respectively, of Southern California. Stroble was a cause celebre; all four of the major newspapers named above carried the details of the initial, concededly inadmissible confession obtained by the District Attorney.

Thus, it would have been difficult for any literate individual exposed in any way to the newspapers of the area to

have failed to form a prejudgment of the petitioner's guilt before his "trial".¹⁸

The District Attorney, for reasons of his own, encouraged the widest publicity and most intemperate reportage concerning the arrest of Stroble. The treatment afforded the death of Linda Joyce Glucoft and the search for her killer was unique even in Hollywood, where the glare of publicity is ever present. The prosecutor tried and convicted petitioner in the public prints, even before he arraigned him in the California courts. By doing so, he effectively prevented the petitioner from obtaining a fair and impartial trial.

II. Admission of an Admittedly Coerced Confession Requires Reversal of a Conviction Based Upon It, Even Though Evidence Apart from This Confession Might Have Sufficed to Justify the Jury's Verdict.

The uncontradicted testimony in the record before this Court sets forth a clear-cut example of a coerced confes-

¹⁸ According to the Audit Bureau of Circulation, the authoritative source of information concerning the circulation of the American newspapers, as quoted in Editor and Publisher for 1950-51, the week-day circulation of the four newspapers named for the quarter ended September 30, 1949, was:

TIMES	385,583
HERALD EXPRESS	358,921 (every week-day except Saturday)
EXAMINER	357,453
DAILY NEWS	251,232

Thus, the aggregate circulation of these newspapers on week-days exceeds 1,300,000. The effect and coverage of radio and television can only be speculated upon.

See in this connection, the comments of the English judiciary in the concurring opinion of Justice Frankfurter in *Pennickamp v. Florida*, 328 U.S. at 357-59 (1946).

sion, as conceded by the California Supreme Court.¹⁹ In the brief, seventy-minute period between the arrest of petitioner and the time he started confessing the police officer in whose custody petitioner was held waved a blackjack under his nose and kicked him in the shins.²⁰ The policeman then stood by while a uniformed park officer slapped the 68-year-old petitioner, a man of admittedly weakened mentality; and knocked off his glasses.²¹ Petitioner was then whisked into a car and hustled into a room that contained 19 police officers and members of the District Attorney's staff, in addition to five stenographers working in relays. Then began petitioner's two-hour-long confession.

It is apparent, then, that this confession resulted from fear and intimidation. This Court has held repeatedly that

¹⁹ *People v. Stroble*, R. 416:

"We may assume that, as a matter of law under the circumstances shown, this first confession was the result of physical abuse or psychological torture or a combination of the two (*cf. Watts v. Indiana*, (1949), 338 U. S. 49 [69 S. Ct. 1347, 93 L. Ed. 1801]; *Turner v. Pennsylvania* (1949), 338 U. S. 62 [69 S. Ct. 1352, 93 L. Ed. 1810]; *Harris v. South Carolina* (1949), 338 U. S. 68 [69 S. Ct. 1354, 1357, 93 L. Ed. 1815], reversing convictions because of the admission of confessions elicited after intensive questioning by relays of officers for hours a day over periods of days). We may further assume that from the record it appears as a matter of law that defendant, although legally sane, was of somewhat weakened mentality (the result of arteriosclerosis and the excessive use of alcohol), and that this first confession was the result of terror indubitably following from the slap by the park foreman, the repeated acts of battery by the arresting officer when he searched defendant, and the presence of 19 law enforcement officials and five stenographers while defendant was questioned. The introduction in evidence of such a confession, if it were material at all, would offend the due process clause of the Fourteenth Amendment. (See *Ashcraft v. Tennessee* (1944), 322 U. S. 143, 154 [64 S. Ct. 921, 88 L. Ed. 1192]; *Haley v. Ohio* (1948), 332 U. S. 596, 599 [68 S. Ct. 302, 92 L. Ed. 224]; see also *Foster v. Illinois* (1947), 332 U. S. 134, 137 [67 S. Ct. 1716, 91 L. Ed. 1955]; *Gibbs v. Burke* (1949), 337 U. S. 773, 781 [69 S. Ct. 1247, 93 L. Ed. 1686].)" (Emphasis added.)

²⁰ *People v. Stroble*, *Ibid.*

²¹ *People v. Stroble*, *Ibid.*

such a confession is "one on which we could not permit a person to stand convicted for a crime."²²

The introduction into evidence of this coerced confession was followed by the admission of five subsequent "confessions." The existence of these latter statements—whether or not they amounted to confessions, and, if they did, whether or not they were given voluntarily—cannot remove from this record the stigma that resulted from the use of the coerced confession. This legal theory is illustrated in the case of *Palakiko v. Hawaii*, 188 F. (2d) 54 (C. A. 9th, 1951). The appellants in that case were convicted of murder in the trial court. Three distinct confessions were made by one of the appellants, who contended, on appeal, that the first two of these were obtained in a fashion that violated his constitutional right to due process under the Fourteenth Amendment.

Discussing this claim, the court said:

"The contention as to the improper inducements require consideration only as they relate to the first two of the three statements made by Majors. Although the complete record of the evidence . . . might disclose sufficient evidence apart from these earlier confessions to warrant conviction, yet if the admission of these earlier confessions denied a constitutional right to Majors, the error would require reversal. We must therefore examine the claim that Majors' first confession or second confession or both were received under circumstances of such irregularity and unfairness as to amount to a denial of due process." (Emphasis added.)²³

But we are met with the opinion of the California Supreme Court that this confession was not material in proving

²² *Malinski v. New York*, 324 U. S. 401, 407 (1945).

²³ *Palakiko v. Hawaii*, 188 F. (2d) 54, 57 (1951).

the ultimate question of plaintiff's guilt.²⁴ Such a conclusion is difficult, if not impossible, to justify in this instance. The reading of Stroble's coerced statement occupied some 94 pages of the trial court transcript.²⁵ After this reading the statement was again repeated to the jury by means of a wire recorder playback.²⁶

On the other hand, the five subsequent "confessions" mentioned by the California Supreme Court came as incidental statements in the course of psychiatric reports, occupied but a few pages in the record, and were not regarded as confessions at all by either court or counsel.²⁷

This Court has recently reaffirmed the proposition that "the use of any confession obtained in violation of due process requires the reversal of the conviction, even though unchallenged evidence, adequate to convict, remains."²⁸ To allow a constitutional violation to be put into the category of error not justifying reversal, would permit state courts to undermine the guaranties of the Federal

²⁴ *People v. Stroble*, R. 416:

"But here the use of the first confession could not have affected the fairness of the defendant's trial; because defendant thereafter made at least five confessions, of materially similar substance and unquestioned admissibility, which were put in evidence. It does not appear that the outcome of the trial would have differed if the first confession had been excluded, nor does it appear that the coercive influence surrounding the first confession continued to operate on the mind of defendant and induce subsequent confessions which were made after defendant had consulted with counsel and been taken before a magistrate (cf. *People v. Jones* (1944), 24 Cal. (2d) 601, 609 [150 P. (2d) 801])."

²⁵ R. 80-138.

²⁶ R. 146.

²⁷ These "confessions" consisted of disclosures made during psychiatric examinations, said disclosures being set forth in the testimony of Dr. Jacob Peter Frostig, R. 189; Carl G. G. Palmberg, R. 190, 197; Dr. Edwin E. McNeil, R. 214; Dr. Victor Parkin, R. 217-220; Dr. Robert E. Wyers, R. 222.

²⁸ *Gallegos v. Nebraska*, 342 U. S. —, 20 Law Week 4025 (Nov. 26, 1951); *Stromberg v. California*, 283 U. S. 359, 368 (1931); *Bram v. U. S.*, 168 U. S. 532, 540 (1897).

Constitution. Thus the California Supreme Court may not brush aside the use of a coerced confession by deemphasizing its materiality where the very fact of coercion is what makes obnoxious any conviction based upon such a confession. As this Court has said:

"The aim of the requirement of due process is not to exclude presumptively false evidence, but to prevent fundamental unfairness in the use of evidence whether true or false. The criteria for decision of that question may differ from those appertaining to the State's rule as to admissibility of a confession."²⁹

III. Petitioner Was Effectively Deprived of Counsel at a Key Point in the Course of the Trial, at the Behest of the Trial Judge.

From the time of arraignment to the time of the filing of this appeal, the petitioner has had as attorneys of record, not one, but four counsel consecutively, at least two of whom at various stages of the proceedings demonstrated a zealous and sincere concern for the protection of all of the rights of the defendant and who labored ably and conscientiously on his behalf.

The vice in the situation, however, lies in the fact that none of these attorneys continuously and actively participated in this case as Stroble's counsel. At one or

²⁹ *Lisenba v. California*, 314 U. S. 219, 236 (1941). See also *Rochin v. California*, 96 L. Ed. Adv. Ops. 154, 159 (1951), where Mr. Justice Frankfurter wrote:

"Use of involuntary verbal confessions in State criminal trials is constitutionally obnoxious not only because of their unreliability. They are inadmissible under the Due Process Clause even though statements contained in them may be independently established as true. Coerced confessions offend the community's sense of fair play and decency. So here, to sanction the brutal conduct which naturally enough was condemned by the court whose judgment is before us, would be to afford brutality the cloak of law. Nothing would be more calculated to discredit law and thereby to brutalize the temper of a society."

more vital stages in the proceeding, no one of the four represented Stroble in a fashion which, even to an uncritical eye, would show a proper discharge of the obligation of the State to provide Fred Stroble with the effective aid of counsel at *every* stage of the proceeding.

Powell v. Alabama, 287 U. S. 45 (1932).

GRAY'S PART AS COUNSEL.—Mr. John Gray, petitioner's present counsel, was substituted for the Public Defender after conviction by the jury and the trial court's finding that Stroble was sane at the time of committing the crime (R. 227, 299). Gray's participation in the case, therefore, however diligent, could not serve to cure any fundamental defect in the proceedings to that point.

HILL AS PURPORTED COUNSEL.—Deputy Public Defender Hill had been assigned by Ellery Cuff, the Public Defender, to conduct the defense along with Deputy Public Defender Al Matthews. An examination of the record, however, and particularly of the statements of Stroble and the Court, discloses that, with the exception of Hill's participation in the argument to the jury and the preliminary examinations, he was not considered, either by the court or by Stroble, to be "the effective counsel" for petitioner. Nor did Hill consider himself to be Stroble's counsel; Hill *never spoke to Stroble* during the trial, not even concerning the waiver of jury trial on the issue of sanity.³⁰

³⁰R. 348:

"Q. Did Al Matthews ever talk to you about getting rid of the jury?"

"A. He never did."

"Q. Did Mr. Hill ever talk to you about getting rid of the jury?"

"A. Mr. Hill never spoke to me, *not one word all during the trial*; not even look at me. He always turn his face at me."

R. 357:

"Mr. Gray: . . . Now the statement of Mr. Hill, I think from the very face of the statement, shows that he had not talked with the defendant concerning this waiver."

"The Court: I think the record shows that."

CUFF AND MATTHEWS AS PURPORTED COUNSEL.—The court stated repeatedly that the real counsel in the case, the man whose constant and pervading presence validated the removal of Al Matthews at a vital juncture in the trial, was Ellery Cuff, the Public Defender.

The Record on the hearing of the motion for new trial indicates the views of the trial judge, as follows (p. 324):

“Mr. Gray: Is it your Honor’s ruling that Mr. Cuff is counsel in this case?”

“The Court: Mr. Cuff, the Public Defender of Los Angeles County, has been counsel in this case from the very inception of the case. . . .”

Again, at p. 325:

“Mr. Gray: Excuse me, Mr. Alexander, at this time, Your Honor, it is your Honor’s ruling that Mr. Cuff was counsel in this case?”

“The Court: Yes, he was appointed at the very inception of the case. . . .”

Petitioner wishes to emphasize the fact that the Deputy Public Defender, Al Matthews, during the course of the jury trial on the murder charge conducted the defense with energy and diligence, and the confidence engendered by his work is attested to in the words of the petitioner on the motion for new trial.³¹ Nor is there any question

³¹ p. 347, Rec. on App.:

“Q: Now, will you state what Mr. Cuff said to you when he came back to the prisoner’s room?”

“A. Mr. Cuff came in and he told me, he said ‘Fred’ he said ‘I am going to send Al on a vacation and I am going to take over’. When he said that, then, that was I know I was lost, because Al knows I had lots of confidence in Al.”

p. 350:

“A. I was nervous anyhow, I didn’t hardly give any attention to the whole thing because I was lost when I didn’t see Al with me.”

that petitioner was under the impression that Matthews was his attorney and the person on whom he relied for counsel and advice.³²

We have, then, the anomalous and probably unprecedented situation of a trial for a capital offense wherein the defendant was under the impression that his counsel was one man, and the trial court believed his counsel to be another.

Cuff's Participation

If, in California, an indigent defendant charged with crime may be required to accept a state agency—the office of Public Defender—as his counsel, rather than an individual attorney, the record in this case shows that the Public Defender, Ellery Cuff, the counsel designated by the court, failed to discharge the obligations (of an attorney to a client) placed upon him.

This Court and other courts delineating the constitutional requirements, have tested the existence of effective aid of counsel by the following criteria:

A. Whether and to what degree counsel was familiar with the facts and the law in the case.

B. Whether on the record it appears that counsel was able to give all or substantially all of his time to the case.

C. Whether counsel, before offering his opinion as to what defendant should do, has properly prepared himself by “an independent examination of the facts, circumstances and laws involved.”

³² p. 346 (In addition to testimony quoted under 31 above):

“Q. You are acquainted with Al Matthews, are you not?”

“A. Yes.

“Q. Now, he *was* has been your attorney in connection with the defense of this action.

“A. From the beginning up to the insanity trial.”

D. Whether before making any determination concerning the course of conduct of the defense there has been a reasonable period and opportunity of consultation between the accused and his counsel.

Von Moltke v. Gillies, 332 U. S. 708, 728 (1948);
House v. Mayo, 324 U. S. 42, 46 (1945);
Shores v. U. S., 80 F. 2d 942, 947 (C. A. 9th, 1935);
People v. Gordon, 30 N. Y. S. 2d 625 (App. Div. 2d Dept., 1941).

The record indicates without dispute that Cuff's participation in this case violated not one, but all four of these precepts.

Cuff's own testimony belies any real familiarity with this case. In testifying on the motion for new trial, he said: (All emphasis added.)

R. 929:

"Q. Now, what portions of the daily transcript of those proceedings had you read?

"A. Well, I don't know—considerable portions when I could get my hands on them.

Again, at p. 330:

"Q. Now, Mr. Cuff is it not true that to your knowledge, Mr. Matthews kept this daily transcript with him at all times?

"A. Yes, that is right. Sometimes he would leave it on his desk and I went in and read it.

"Q. You mean during the lunch hour.

"A. Yes, and I would go in and read it portions of it; but then I would have the report from Mr. Matthews as to what each witness had said and what witnesses we had."

And at p. 330:

"... I will say that I did not contact all those witnesses and possibly did not read the testimony of all

those witnesses; but I did talk to Mr. Hill and to Mr. Matthews as to what had been testified to."

The trial lasted nineteen days. That Cuff did not give all or even substantially all of his time to the case, again is evident from his own testimony on the motion for new trial:

R. 330:

"Q. Now Mr. Cuff, is it not true that for a period of time of approximately five days to a week during the trial of this action, you were not present in Los Angeles?

"A. That is right. I came back here on Friday, the first Friday in January I believe."

The foregoing excerpts also make it clear that in advising Stroble on the question of waiving a jury trial on the plea of insanity Cuff did not make "an independent examination of the facts, circumstances and laws involved." (*Von Moltke v. Gillies, supra.*)

And, finally, that the consultations with petitioner were of such short duration as to completely rebut any argument of adequacy in this respect is abundantly clear again from Cuff's own words:

R. 328:

"Q. Mr. Cuff, when did you first meet the defendant Fred Stroble?

"A. Either that morning (the day of the trial on the question of insanity) or the morning before. I forget which it was, to talk to him."

And at p. 331:

"Q. The court did not take a recess for the purpose of allowing you to confer with Mr. Stroble?

"A. No."

"Q. Approximately how long did your conversation with Mr. Stroble take on that afternoon?

"A. Oh, I would say between five and ten minutes."

Cuff could not have believed that he was fulfilling his duty toward the petitioner by conferring with him for, at most, a ten-minute period in helping him to make such a vital determination. That Cuff knew his own shortcomings in this respect and but for the interruption of the court would have disqualified himself from counseling Stroble, is apparent from his own statements in chambers at the conclusion of the murder trial. At that time, when it became apparent that the trial court wished Matthews to be removed or severely restricted in his further conduct of the defense, Cuff said the following to the court (R. 91):

"I may say in the record, so far as the case is concerned, I have had little or no contact with Mr. Stroble. It would be difficult for me to handle—"

"The Court: I am not asking you to participate in the trial, Mr. Cuff,

If, then, we accept the trial court's statement that Ellery Cuff was counsel for petitioner in this case, the conviction must be reversed for want of a showing on the face of the record that the state provided petitioner with the effective aid of counsel to which he was entitled under the Fourteenth Amendment.

Matthews' Participation

It may well be argued that Stroble's attorney in this trial was not Ellery Cuff, but Al Matthews. He was counsel of defendant's choice, and there was no question of his effectiveness while he acted as such. It was his enforced removal at a most vital juncture in the trial which constitutes the real denial of petitioner's right to counsel.

Stroble, by his own statements, had relied heavily on Matthews' judgment and reposed all his trust and confidence in the Deputy. Nevertheless, Matthews was removed at a time when petitioner was faced with the vital decision of

whether or not to waive the jury on the question of insanity. And this was, in effect, to deprive petitioner of counsel's advice when that advice was needed and counted on most desperately.

For, standing before the trial court was a man concededly of advanced age, semi-literate, and of weakened mentality (R. 416). Having just been convicted of the crime of murder in the first degree, he was asked to make a choice of having the issue of his sanity tried by a judge or a jury. Could there have been a point in the trial more calculated to have a disastrous effect in his fight for his life if his choice was not a deliberate, calculated, and reasoned one? This was a choice which even the trial court recognized as requiring almost professional competence.³³

As this Court said in *Adams v. U. S. ex rel McCann*, 317 U. S. 269, 277 (1942):

"The question in each case is whether the accused was competent to exercise an intelligent, informed judgment—and for determination of this question it is of course relevant whether he had the advice of counsel."

Although Matthews appeared at the sanity hearing, the record shows that he at no time was given the opportunity to

³³ p. 343, Rec. on App.:

"The Witness: (Bliss, special investigator). If I may say, I made no notes at that time, and the discussion of Mr. Cuff with Mr. Stoble concerning what could be brought out or what Mr. Stoble desired to do in regard to whether to continue with the jury or not, that was primarily between these two and I did not make close notes.

"The Court: That was a question of law a little bit above your head.

"The Witness: Yes.

"Mr. Gray: Excuse me, your Honor.

"The Court: A question of law a little bit over Mr. Bliss head. I hope you will pardon me for asking the question.

"Mr. Gray: Of course, your Honor, that is a point which I am seeking to make, if it is over Mr. Bliss head as a man experienced in these matters, certainly it is over defendant's head."

consult with petitioner on the question of the waiver, nor was he ever consulted at all as to this matter, nor as to the course of conduct of the proceedings from that point on.

R. 323:

"(Gray) . . . The defendant's own affidavit states that he never talked to Mr. Hill; that he had never talked to Mr. Matthews regarding the waiver of the jury."

And at p. 336:

"Q. (Gray) When did you first tell Mr. Matthews that the jury was going to be waived?

"A. (Cuff) I didn't tell Mr. Matthews it was going to be waived until after it was done. I never did tell him that. . . ."

The trial court has, in effect, stated that the removal of Matthews was necessary to maintain the decorum of the court (R. 391). Such considerations do not excuse the violation of defendant's constitutional rights.

As was so clearly pointed out in *Lambert v. U. S.*, 101 F. 2d 960, 964 (C. A. 5th, 1939):

"In situations of this kind, while the Judge should certainly preserve and protect the dignity of the court the greatest care should be exercised in doing it, so as not to react upon the defendant himself, who at least, as to the controversy between court and counsel, is a wholly innocent bystander."

It cannot be denied that the trial court's effective removal of Matthews through his demand for the intervention of Cuff "reacted upon the defendant himself" by denying to Stroble the advice and counsel of Matthews, whose opinion he valued most.

Perhaps the clearest statement on the position of this Court on the conduct of a trial court in these circumstances,

is to be found in *Glasser v. U. S.*, 315 U. S. 60, 71, 75, 76 (1942), where this Court reversed a conviction on a record indicating that the trial court of its own initiative interfered with the defendant's choice of counsel by having his attorney represent another defendant in the case. The court, in part, said (all emphasis added):

"No such concern [protecting defendant's right to counsel] on the part of the trial court for the basic rights of Glasser is disclosed by the record before us. The possibility of the inconsistent interests of Glasser and Kretzke was brought home to the court, but instead of jealously guarding Glasser's rights, the court may fairly be said to be responsible for creating a situation which resulted in the impairment of those rights. For the manner in which the parties accepted the appointment indicates that they thought they were acceding to the wishes of the court. . . . The court made no effort to reascertain Glasser's attitude or wishes. Under these circumstances to hold that Glasser freely, albeit tacitly, acquiesced in the appointment of Stewart is to do violence to reality and to condone a dangerous laxity on the part of the trial court in the discharge of its duty to preserve the fundamental rights of an accused. . . ." (at p. 71)

"To determine the precise degree of prejudice sustained by Glasser as a result of the court's appointment of Stewart as counsel for Kretzke is at once difficult and unnecessary. The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial. . . ." (at p. 75)

"Our examination of the record leads to the conclusion that Stewart's representation of Glasser was not as effective as it might have been if the appointment had not been made. We hold that the court thereby denied Glasser his right to have the effective assistance of counsel, guaranteed by the Sixth Amendment. This error requires that the verdict be set aside and a new trial ordered as to Glasser." (at p. 76)

Accordingly, petitioner was denied effective aid of counsel at a time when that aid might have spelled the difference between life and death. The admissions of the trial court, of the Public Defender, of Deputy Public Defender Hill, and the testimony of the petitioner himself, make it abundantly clear that in order for the State of California to have fulfilled the requirements of Due Process, either of two courses of action was required to be followed at the time of Cuff's appearance in the trial on the question of insanity:

(ii) If we accept the trial court's statement that Ellery Cuff, the Public Defender, was his attorney, Cuff should have explained to the trial court his lack of familiarity with the "facts, circumstances and laws involved," and requested a continuance to prepare himself, so as to be able to give Stogble the informed, intelligent opinion which the Fourteenth Amendment guarantees to him.³⁴ This Cuff failed to do.

(ii) On the other hand, the trial court might have recognized that the only attorney at this point in the case who was sufficiently familiar with the "facts, circumstances and laws involved" to be able to give "intelligent and informed" advice to petitioner, was Al Matthews. The court then should have permitted Matthews to continue his active participation on petitioner's behalf, since the remedy of contempt was always available if Matthews' conduct interfered with the proper conduct of the court proceedings.

The trial court failed to adopt either alternative. Petitioner was required to make a decision which may in fact have cost him his life, advised by an attorney who was concededly unfamiliar with all the facts and issues in this

³⁴ It is interesting to note that in the judge's chambers Cuff attempted to do just this, but was cut off by the trial court and then apparently suffered a change of heart and took over for Matthews for the remainder of the trial. (See R. 391-392.)

trial, and who had spent, by his own admission, a period of five to ten minutes with his "client."

The State of California was the first state in the Union to authorize its counties to establish the office of Public Defender in recognition of the obligation of government to provide counsel for indigent defendants. Manifestly, nothing could frustrate the attempted statutory discharge of that moral and (in capital cases) Constitutional obligation more than the development of a practice by the courts or the Public Defender to interfere with the conduct of the trial by the attorney accepted by the defendant as his personal counsel, unless the latter's conduct had been in fact prejudicial to the interest of the defendant in carrying on the defense.

Cf. *In re Hough*, 24 Cal. (2d) 522, 528 (1944).

We are certain that this Court would find such a practice abhorrent in a case involving counsel privately retained by the defendant (Cf. *Glasser v. U. S.*, *supra*). Where counsel is a public official, the danger that a trial court may eventually seek to dictate the manner and method of the defense is much more acute because of the inevitability of continued appearances by the same officials before the same judges in criminal actions.

The highly confidential, highly personal nature of the attorney-client relationship³⁵ should not be vitiated by the

³⁵ The Court of Appeals of New York has stated:

"The relation of attorney and client is that of master and servant in a limited and dignified sense, and it involves the highest trust and confidence. It cannot be delegated without consent, and it cannot exist between an attorney employed by a corporation to practise law for it, and a client of the corporation, for he would be subject to the directions of the corporation, and not to the directions of the client. There would be neither contract nor privity between him and the client, and he would not owe even the duty of counsel to the actual litigant."

Re Co-Operative Law Co., 198 N. Y. 479, 487; 32 L. R. A. (N.S.) 55, 58 (1910).

fortuitous circumstance of the poverty of the defendant. An indigent person accused of crime is entitled to representation by an *individual* attorney, and is entitled to have a typical relationship with his assigned adviser, including confidence in the continuing responsibility and loyalty of the assigned attorney. The fact that the Public Defender's office is a governmental and charitable agency cannot alter the essence of the attorney-client relationship.

This Court must hold, then, that the obligation to provide effective aid of counsel is not discharged upon the appointment of the Office of Public Defender by the trial court. It is discharged only when that officer establishes an individualized relationship between a member of his staff and the defendant which is not subsequently disturbed or destroyed in the absence of a clear showing that the defendant's interests have been prejudiced by improper conduct of the defense.

Petitioner, therefore, respectfully urges that the failure by the trial court to afford petitioner the advice and counsel of Matthews at the sanity trial, and the trial court's failure to continue the proceedings until such time as Ellery Cuff was sufficiently familiar with the facts, circumstances, and laws involved to give an intelligent, informed opinion on the question of waiver, constituted a denial of petitioner's right to counsel and compels the reversal of the conviction.

IV. Denial of Due Process Results Where a Combination of Illegal Acts and Prejudicial Circumstances Deprived Petitioner of a Fair Trial, Even If Each Particular Aspect of the Procedure Leading to Conviction, Considered Separately, Would Not Invalidate the Conviction.

This case is one in which the petitioner was made the victim of the prosecution's zeal for conviction.³⁶ Com-

³⁶ See *Olmstead v. United States*, 277 U. S. 438, 499 (1928); *McNabb v. United States*, 318 U. S. 332, 343 (1943).

mening with lesser transgressions of the California Penal Code, and culminating in certain violations of petitioner's rights which individually amounted to deprivation of Due Process, the prosecution here by a process of erosion penetrated the bulwark of Due Process, by successively stripping defendant of the protections afforded by law. The question before this Court can only be decided from a consideration of the whole course of the proceedings and cannot be decided by the presence or absence of any single factor. There can be no doubt that a defendant can be deprived of a fair trial by a series of lesser transgressions, even if no one of them considered out of context would vitiate the proceedings.

The record in this case from arrest to conviction discloses a consistent, conscious disregard by the prosecuting officials of the various guaranties of fairness afforded criminal defendants:

1. *Delay in arraignment.* On the day of petitioner's arrest, there was outstanding a warrant returnable to a magistrate sitting on the *seventh* floor of the Los Angeles Hall of Justice (R. 270). Within one hour of the petitioner's arrest, he was taken to the *sixth* floor of the Hall of Justice for interrogation by the District Attorney (R. 60). Twenty-three and one-half hours elapsed between the time of his arrest and the time of his arraignment. This failure to arraign petitioner promptly was a clear violation of Section 859 of the Penal Code of California, which provides for arraignment "without unnecessary delay."

2. *Refusal to permit counsel to consult defendant.* Throughout the period of interrogation of Stroble by the District Attorney, John D. Gray, an attorney at law entitled to practice in the courts of record of California, sought to consult the petitioner (R. 176-180). Mr. Gray had been asked by petitioner's daughter and son-in-law to interview

him. Gray's request to see petitioner was denied and he was told to return the following day (R. 178). Eight hours passed before Mr. Gray was permitted to visit petitioner (R. 180). This conduct by the prosecuting official was in direct violation of Section 825 of the California Penal Code, which provides that any attorney at law entitled to practice in the California courts may visit an arrested individual at the request of any relative of that individual.

3. *Admission into evidence of a confession exacted during a period of illegal detention.* During the period of illegal detention discussed in "1." above, a confession was obtained from petitioner, which was later used at his trial. Were petitioner being tried by a Federal tribunal, the admission of this confession into evidence would have invalidated the conviction. (*McNabb v. U. S.*, 318 U. S. 332 (1943).) While this Court has refused to extend the *McNabb* rule to the state courts, it has not declared that the use of a confession obtained under such circumstances cannot be considered, along with other factors, in determining whether the accused has been given a fair trial.

4. *The use of a coerced confession.* As delineated in section II above, the prosecution introduced into evidence and relied heavily upon a confession obtained from petitioner under coercive circumstances. The California Supreme Court, while conceding that this confession was coerced, refused to reverse petitioner's conviction on the grounds that the confession introduced into evidence did not constitute reversible error considered in itself. We submit that even if the view of the California Supreme Court is correct, and the effect of the introduction of a coerced confession is regarded as a matter of degree, it must be considered along with the other factors in this situation in determining whether petitioner received a fair trial.

5. *The prosecution inspired publicity.* The District Attorney instigated publicity in the Los Angeles newspapers

was undoubtedly responsible in great degree for the virtual certainty of petitioner's conviction. Petitioner's original confession, later determined to be inadmissible, was released to the public prints by the prosecutor, with the inevitable consequence of bringing it to the attention of substantially all the potential jurors in Los Angeles County (Exhibit "AA," R. 361). Even if this Court should hold that under the circumstances of the public hysteria attendant upon the newspaper treatment of the crime and its aftermath, it was possible for petitioner to obtain a fair trial, the prosecutor's deliberate feeding of material to the newspapers detracted further from the possibility of petitioner's obtaining an impartial trial.

6. Substitution of counsel at a critical point in the trial.

At the insistence of the trial court, the previously assigned Deputy Public Defender, Matthews, was forced to retire from active participation in the case (R. 371-394). His removal came at the very moment when petitioner was called upon to make the vital decision whether to have the question of his sanity tried by the judge or the jury. In Matthews' place the Public Defender, Cuff, was in effect substituted (R. 323, 336). Yet the Public Defender was, by his own admission, only cursorily familiar with the entire trial to that point (R. 329). If the Court should find that such substitution did not constitute a deprivation of petitioner's right to effective aid of counsel, it is certainly a factor which must be considered in determining whether defendant was given the fair trial guaranteed to him by the Fourteenth Amendment.

The record thus leaves no doubt that the officials of the State were determined to obtain a conviction *and the death penalty* in this case. The rights of the accused to orderly procedure, pre-trial advice of counsel, an unbiased jury, effective representation by diligent counsel, the exclusion of incompetent evidence—these rights, if not denied abso-

lutely, were substantially disregarded by the zealots of the prosecutor's office. This Court has recently observed that:

"Regard for the requirements of the Due Process Clause 'inescapably imposes upon this Court an exercise of judgment upon the whole course of the proceedings [resulting in a conviction] in order to ascertain whether they offend those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous offenses.' "

(*Rochin v. California*, 342 U. S. , 96 L. ed. Adv. Ops. 154, 157 (January 2, 1952).)

This Court cannot but conclude, as it did in *Rochin's* case, that:

"Applying these general considerations to the circumstances of the present case, we are compelled to conclude that the proceedings by which this conviction was obtained do more than offend some fastidious squeamishness or private sentimentalism about combating crime too energetically. It is conduct that shocks the conscience."

(*Rochin v. California*, 342 U. S. —, 96 L. ed. Adv. Ops. 159.)

Conclusion

The personal attorney for petitioner Stroble, as the record will show, is John D. Gray, Esq. The additional counsel who appeared for petitioner, and whose names appear on the brief, are here, as some of them were before the California Supreme Court, as counsel for the American Civil Liberties Union, by reason of the grave civil liberties and civil rights questions presented in this case.

We are concerned here not just with the manifest unfairness imposed on petitioner Stroble in the trial of this case. Of paramount concern to us is the proposition: that only

this court can correct the flagrant abuse of Due Process against a person accused of crime occurring in this case and recognized, but sanctioned, by the Supreme Court of California.

Charged with *responsible* guilt of a most revolting crime, there was not even the form of an ordered or fair consideration of petitioner Stroble's guilt or innocence, sanity or madness, under the law. Instead, the District Attorney, representing the State of California, coerced a confession and, with all the powerful authority of his office, in most theatrical fashion, spread literally millions of copies of it throughout the County of Los Angeles in the newspapers. Then, with utter disregard of his duty to the defendant before him, the trial judge in arbitrary fashion deprived petitioner Stroble of the right to the effective and substantial aid of the only attorney who had the requisite knowledge and information wherewith to properly advise him, insisted upon the appointment of new counsel entirely unfamiliar with the case, secured Stroble's waiver to his right to a jury trial on the important issue of his sanity, and then without more ado, found him "sane" and responsible for his crime.

Then, four Justices of the California Supreme Court said: "We may agree with the defendant that it was improper for the District Attorney to issue 'play-by-play bulletins' during the course of defendant's confessions" (R. 414); "We may assume that, as a matter of law under the circumstances shown, this first confession was the result of physical abuse or psychological torture or a combination of the two . . . the introduction in evidence of such a confession, if it were material at all, would offend the due process clause of the Fourteenth Amendment" (R. 416). "The record sustains defendant's assertions that Mr. Matthews [the attorney, who as a Deputy Public Defender had personally represented Stroble during the whole trial] was

required to retire from the active representation of defendant because Mr. Cuff and the trial judge disapproved of certain things he had done in connection with the case; . . . " (R. 423). Nevertheless, the California Supreme Court affirmed with an opinion replete with specious reasons the effect of which is wholly subversive of the protection "implicit in the concept of ordered liberty".³⁷

The conviction and judgment, under the circumstances here, must be reversed.

Respectfully submitted,

JOHN D. GRAY,
A. L. WIRIN,
FRED OKRAND,
CLEORE WARNE,
Counsel for Petitioner.

Of Counsel:

MAXWELL E. GREENBERG,
GORDON STULBERG,
ROBERT I. WEIL,
EDMUND W. COOKE,
LOREN MILLER.

³⁷ It is probably superfluous to cite *Palko v. Connecticut*, 302 U.S. 319, 325 (1937).

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Supreme Court of the United States

October Term, 1951

No. 373

FRED STROBLE,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

RESPONDENT'S BRIEF.

EDMUND G. BROWN,
*Attorney General of the State
of California,*

WILLIAM V. O'CONNOR,
Chief Deputy Attorney General,

FRANK W. RICHARDS,
Deputy Attorney General,
600 State Building,
Los Angeles 12, California,

S. ERNEST ROLL,
*District Attorney of
Los Angeles County,*

ADOLPH ALEXANDER, and
JEREMIAH J. SULLIVAN,
Deputies District Attorney,
600 Hall of Justice,
Los Angeles 12, California,

Attorneys for Respondent.

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IN THE
Supreme Court of the United States

October Term, 1951
No. 373

FRED STROBLE,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

RESPONDENT'S BRIEF.

Statement of Case.

On November 22, 1949, an information was filed in the Superior Court of the State of California in and for the County of Los Angeles charging petitioner with the murder of Linda Joyce Glucoft. [R. 1.] On November 25, 1949, petitioner was arraigned and the Public Defender was appointed to represent him. [R. 325.] Thereafter petitioner moved to set aside the Information under Section 995 of the Penal Code. After taking testimony and hearing argument on the motion the same was denied. Petitioner then entered a plea of not guilty and not guilty by reason of insanity; whereupon the court appointed Dr. Robert E. Wyers, Superintendent of the Norwalk State Hospital, and Drs. Edwin E. McNeil and Victor Parkin as experts to examine petitioner. [R. 292-293.] Trial of petitioner commenced on January 3, 1950, resulting in

a verdict by the jury of Murder in the First Degree on petitioner's plea of not guilty. He then waived trial by jury and his plea of not guilty by reason of insanity was tried by the court, and he was adjudged sane. Thereafter John D. Gray, petitioner's present counsel was substituted in place and stead of the Public Defender. [R. 299-300.] Numerous continuances were then granted for counsel to familiarize himself with the record. A motion for new trial and a motion in arrest of judgment was then made. After taking testimony and hearing argument both motions were denied. [R. 314-369.] Thereafter judgment of the extreme penalty was imposed. [R. 369-370.] On appeal to the Supreme Court of California the judgment was unanimously affirmed. (*People v. Stroble* (1951), 36 Cal. 2d 615.)

On October 8, 1951, this Court granted the petition for Writ of Certiorari. [R. 426.]

Statement of Facts.

Linda Joyce Glucoft, a six year old child, lived with her parents across the street from the Hausman family in a residential section of the City of Los Angeles. The Hausmans, too, had a six year old child, Rochelle, and the two children were playmates. [R. 15.]

On November 14, 1949, about 3:45 P. M., Linda left her mother, saying she was going to play with Rochelle. At that time, as part of her clothing, she was wearing panties. [People's Ex. 10.] It had been Linda's habit to return to her home about 5 P. M. On this day she did not return and at about 5:30 P. M. the police were notified and the search for Linda started. [R. 17.]

In the early morning of November 15, 1949, the body of Linda was found behind the incinerator of the Haus-

man home, wrapped in a blanket [People's Ex. 3] and covered with paper and wooden boxes. [R. 17.] Detective W. H. Brennan arrived at the scene at about 6:50 A. M. He saw Linda's body wrapped and concealed as above described; and an ax [People's Ex. 9] was standing upright against the incinerator. A knife [People's Ex. 6] was stuck in a pile of lumber near the incinerator. An ice pick [People's Ex. 7] was in the garage on a shelf and a ball peen hammer [People's Ex. 8] was behind a pile of wood. The panties, which had been worn by Linda [People's Ex. 10] were found in the incinerator in a torn condition. [R. 18, 19, 20.]

On the day the body was found an autopsy was performed. The cause of death was found to be asphyxia due to strangulation. [R. 25.] A necktie [People's Ex. 4] was wound twice around the neck of the child. In addition to a mass of contusions and abrasions, the autopsy surgeon found the following: In the back of the neck there was a deep laceration which extended deep into the neck and passed between the sixth and seventh cervical vertebrae lacerating the spinal cord. [R. 33.] The external genitalia showed irritation. The right chest showed two small puncture wounds. [R. 34.] In the left back was another puncture wound. [R. 36.] In the right parietal bone was a depressed fracture. In the left occipital area there was another depressed fracture. [R. 38.] There were four linear fractures of the occipital bone extending throughout the back of the head. [R. 39.] The abrasions and discolorations on the child's back could have been caused by the butt end of an ax. [People's Ex. 9; R. 40.] The lacerations immediately above the fractures in the child's temple area could have been caused by the ball peen hammer. [People's Ex. 8; R. 41.] The

wound in the back of the neck which severed the spinal cord could have been caused by the knife. [People's Ex. 6; R. 41.] The three puncture wounds found on the child's chest and back could have been caused by the ice pick. [People's Ex. 7; R. 42.] The irritation of the child's private parts could have been caused by fingering on the afternoon of November 14, 1949. [R. 42-43.] In the opinion of the doctor all the wounds, with the exception of the deep laceration in the back of the neck, were inflicted upon the child while the child was still alive. [R. 43-45.]

The petitioner, who is the father of Sylvia Hausman and the grandfather of Rochelle, was at the home of the Hausmans on November 14, 1949, the day the child disappeared, having spent several days there. At about 2:30 P. M. of that day Rochelle returned home from school and her mother prepared to take the child to a party, both leaving the house between 3:30 and 4 P. M. Before leaving, Sylvia Hausman instructed petitioner that she would phone him and give him certain instructions pertaining to the preparation of the evening meal. The petitioner remained at the home alone. [R. 5.] In addition to Rochelle, the Hausmans had a young son, Fred, who shared a bedroom with Rochelle, each child sleeping on a single bed. On a dresser in this bedroom was a tie rack. When Mrs. Hausman left her home the knitted tie [People's Ex. 4], which she had previously bought for Fred, was on this rack [R. 8], and the blanket [People's Ex. 3] was on Fred's bed. The knife [People's Ex. 6] was in the kitchen, as was the ice pick [People's Ex. 7] and the ball peen hammer. [People's Ex. 8; R. 10.] The ax [People's Ex. 9] was customarily kept in the garage. [R. 11.] Some time after 4:30 P. M. of

that day, she phoned the house at least twice, but received no answer. She returned to her home at about 6 P. M. and found the petitioner gone. However, his clothes were still there. [R. 14.]

Stroble had, on many previous occasions, molested female children [R. 156-157, 163], and at the time of the murder of Linda was a fugitive from justice, having jumped bail on a charge of molesting young girls. [R. 110, 121-122.] On occasions he used the Hausman home to "hide out." [R. 165.] Suspicion was immediately focused on petitioner and as a result "one of the most publicized and extensive manhunts in California history was begun." (See p. 5 Petition for Writ of Certiorari.)

On the morning of November 15, 1949, between 1:30 A. M. and 2 A. M., Stroble entered a hotel at Ocean Park, a beach resort within the City of Los Angeles, asked for a room, registered under the name of Frank J. Hoff, and gave an address which was fictitious. [Rep. Tr. on Appeal pp. 34-40.] The clerk who rented the room to Stroble detected no alcoholic odor on his breath and stated positively he was sober. Stroble remained at this hotel for three nights, leaving on the morning of the 17th, between 6 and 7 A. M. [Rep. Tr. on Appeal, p. 41.] About noon on November 17, 1949, Stroble was arrested.

The Technical Director of the Scientific Crime Investigation Laboratory of the Los Angeles Police Department, whose qualifications were unquestioned [R. 47] made an examination of Stroble's fingernails and the clothes he was wearing at that time. Previously, this witness had examined the scene where the child's body was discovered. [R. 49.] This witness found blood under the fingernails of petitioner's left hand. On the right trouser cuff of the pants worn by Stroble were a series of

human blood stains. [R. 49.] Material which was found on the blanket [People's Ex. 3], in which the child's body was wrapped, was compared with the debris found in the cuffs of Stroble's trousers. Both contained portions of compound needles from cypress trees and grass leaves. Cypress trees overhung the fence adjacent to the incinerator where the child's body was discovered. [R. 50-51.] The head portion of the ax [People's Ex. 9] was contaminated with human blood and hairs. The hairs were microscopically similar to the hairs on the deceased child's head. [R. 53.] The knife [People's Ex. 6] and the ice pick [People's Ex. 7] were similarly examined and both were found contaminated with human blood. Additionally, on the knife [People's Ex. 6] was a single strand of hair, which on examination proved similar to the hair on Linda's head. [R. 53.]

Within an hour after petitioner's arrest he was brought to the Office of the District Attorney. There, in the presence of nineteen people, petitioner made a complete confession. [R. 81-138.] This confession was reported by five stenographers operating in relays [R. 81] and recorded on a wire recorder that was started five minutes before Stroble entered the room and, with the exception of some short breaks, was kept in continuous operation until the confession was completed. [R. 143.]

The substance of his confession is as follows:

He was born in Austria in 1881 and came to the United States in 1901. [R. 81-82.] We worked as a baker for 21 years, but has not worked since 1946. He knew Linda (deceased) a couple of years. [R. 84.] That Linda came to Rochelle's house every day and the children would play in the back yard. [R. 85.] That on Monday, November

14, he came to the Hausman house at about 2 o'clock P. M. and his daughter, Mrs. Hausman, was in bed. [R. 89.] About that time Rochelle came home from school. Mrs. Hausman sent him on an errand to buy some ribbon to tie up a box. [R. 90.] About 3:15 P. M., Mrs. Hausman and Rochelle left the house to go to a party, leaving petitioner at home alone. [R. 91.] He had a couple of drinks then Linda came into the house. He gave her a chocolate bar and Linda asked for Rochelle. [R. 92-93.] He took her into the "kid's" bedroom where he kissed and squeezed her. He tickled her with his finger and she said "That's not nice." He then put his finger inside her vagina and "she didn't like it." She again asked for Rochelle and wanted to go out, whereupon he threw her on the bed. She didn't like that and started to scream. [R. 95.] While on the bed he put his hand under her dress and his finger in the vagina. He got on top of her "lay on her and make believe you know." She started to holler and wrestle away. He held her down. [R. 96.] "All she wanted to get away from me—I was laying on top of her. Then—we had been playing there lots of times. Some way, you know, my nature works that way. You know if I just touch anybody like that, who I like—at that time, soon as they start undressing—and she don't want to give in and all. Then she want to start to holler and when this happened, I got ahold on her throat." He squeezed until she became quiet. He got up and she started squirming around and became wild again. [R. 97.] He looked around and saw some neckties behind the dresser. He took three or four steps to get the necktie. She then was pretty tired out and hurt pretty bad. To make sure she wouldn't come back he put the necktie around her neck and tied it. [R. 98.] He thought she was dead so he

went to the kitchen and got a couple of drinks. He figured the child was dead five or eight minutes after he got his hand on her.

When he went out to the kitchen she started moving around and "I didn't know what the hell to do." He took a hammer from the kitchen drawer, took her off the bed and wrapped her in a blanket. [R. 99.] He knew she was not dead. He then hit her on the temple with the hammer because "This is a very sensitive part, see—this is one of the most particular spots in the body—she couldn't live any longer because it is impossible." [R. 100.] However, when he hit her with the hammer she "kinda" moved. He then got scared that she was still alive. While wrapped in the blanket, he dragged her through the house and across the back yard to the incinerator. He could not leave her in the room as people were always coming in and he dragged her out that way "in case somebody look over the fence—so many people passing by and nobody would see me." He was not sure she was dead so he returned to the kitchen, got an ice pick, and went back to where the child was. He felt for her heart and then pushed the ice pick into her, once in front and he thought twice in the back. He wanted to be sure he got the heart and she wouldn't suffer. [R. 101.]

He then went to the garage, placed the ice pick on a shelf and got an ax. He figured the damage is done so he might as well finish it. He then hit the child over the head a couple of times. [R. 102.] He used the flat metal part of the ax and hit her on the backbone also.

He hit her four or five times and put the ax at the side of the incinerator. He then returned to the kitchen and got a knife. [R. 103.] The blade was about two inches wide. He then returned to the child and stabbed her in the neck in the back. He wanted that spot because "I tell you how this came to my mind. I saw when I was in Mexico, when they got through in a bull fight, well, bulls are already dead and they go there, that's the last 'thing' he does, is take a short knife about that long (indicating), goes over there and throws that knife right behind the neck there, but that's final." [R. 104.] He then came back into the house and saw the child's panties in the bedroom. He placed them in the incinerator. [R. 108.] He covered the child's body with boxes so they won't notice it right away. He returned to the house, adjusted the flame under the potatoes and left for Ocean Park. [R. 106.] He registered at a hotel, using the name and address of some man who had given him a card. He did that because he knew if he used his right name he wouldn't be there two hours. The law would pick him up. [R. 124.]

He came downtown today (day of arrest) because "I want to give myself up this afternoon. That is why I went downtown. I wanted to call up my daughter and then Van de Kamp (his former employer) and the police department." He had been reading the newspaper accounts of the murder, but he was relaxing and walking around freely as the sooner they would pick him up the better it would be for him. [R. 125.] He knew he was up against it even if he let her go. He wouldn't be out of the house and have the whole neighborhood after him. [R. 137.]

Summary of Argument.

It is respondent's position that Stroble was not denied due process of law and in support of this contention has set forth herein the reasons. The entire record is the best evidence that due process was not denied. Under the circumstances of this case Stroble was fairly tried and properly convicted and none of the grounds relied upon by Stroble affected the result of his trial or made the trial itself unfair.

I.

Defendant Was Not Denied Due Process and Was Properly Convicted After His Guilt Was Demonstrated and No Newspaper Reports Contributed to the Guilty Verdict.

There is very little in the record relative to any newspaper reports. Naturally, the finding of the child's body mangled, mutilated and violated could be expected to receive widespread newspaper attention resulting in notorious widespread public excitement and revulsion. In fact, it was by reason of this widespread publicity that petitioner was detected and apprehended. The murder had been committed on November 14, 1949, and the trial of petitioner did not commence until January 3, 1950, and the verdict of guilty was returned on January 19, 1950.

A criminal action in the Superior Court can be removed from the court in which it is pending on one ground only; that the defendant cannot have a fair and impartial trial in the County (Sec. 1033, Penal Code). The application for removal must be made in open court and in writing, verified by the defendant (Sec. 1034, Penal Code).

If any newspaper account of the commission of the crime here in question did, in any way, prejudice Stroble's right to a "Fair and impartial trial" in Los Angeles County, there was a remedy available to him. At no time did he make an application for the removal of his case nor did he ever urge in the trial court that he was in anywise prejudiced at his trial by any newspaper accounts.

At Stroble's motion for a new trial he urged that: "I urge that the defendant was deprived of the presumption of innocence by the premature release by the District Attorney's office of the details of the confession."

In support of his motion for a new trial, he offered, and there were received as exhibits, several newspapers in which the account of the crime was printed. There was no affidavit or evidence introduced to show that any juror read or considered these newspaper articles in arriving at their verdict.

The Supreme Court of California said in *People v. Stroble* (1951), 36 Cal. 2d 615, 621, that there is no indication that the jury based their verdict on the newspaper accounts of the statements rather than upon the evidence, and that the case should not be reversed because of mere speculation that the jury might unconsciously have been improperly influenced adversely to defendant in the performance of their duties by the newspaper accounts.

It was not until after the petitioner was found guilty of murder and found to be sane that this question of newspaper publicity was injected into the case. This was done

on petitioner's motion for a new trial, at which time the following occurred:

"Mr. Gray: Now, in further support of the motion under (fol. 1233) Subdivision 6, I urge that the defendant was deprived of the presumption of innocence by the premature release by the District Attorney's office of the details of the confession; and in support of this, your Honor, I offer at this time the 10 Star Edition of the Daily News, dated Thursday, November 17, 1949; the Sunrise Edition of the Los Angeles Examiner of Friday, November 18, 1949; the Sunset Edition of the Los Angeles Evening Herald and Express, Thursday, November 17, 1949; and Pages 1 and 2 of the Los Angeles Times, Home Edition, Friday, November 18, 1949.

The Court: We will mark those exhibits double AA in one group.

Mr. Gray: Your Honor is no doubt familiar with the headlines and contents of those newspapers.

The Court: Well, the answer to the proposition is rather obvious, if you have finished the presentation of this question—the jurors were all thoroughly examined and all definitely stated that they would give to the defendant the benefit of the presumption of innocence. To say he was deprived of it because of a newspaper, or all newspapers—all newspapers have published matters concerning the case—is wholly untenable and wholly illogical. There is nothing to show those jurors ever saw those papers or ever read those papers. They were fully examined so far as defense counsel desired as to any knowledge

or information they might have of the case. They were instructed as to the (fol. 1234) doctrine of reasonable doubt, and there is one presumption that does apply here and it is presumed the jury followed the law. As a matter of fact, there was no defense offered to the murder charge here whatsoever. The only thing in the nature of a defense which was offered was the legal argument as to whether it was a murder of the first or of the second degree, and the argument upon the hypothesis of first degree murder, as to which of the two penalties should be imposed." [R. 361-362.]

During the selection of the jury, the jurors were questioned concerning whether or not they had a fixed opinion of the petitioner's guilt and thorough inquiry was made by defense counsel as to whether or not the jurors had read the newspaper accounts of the killing.

The record contains the *voir dire* examination of one prospective juror who later was accepted by both sides. He was asked if he had read or heard anything about the case and answered, "I have;" he was asked if he had formed anything like a fixed opinion and answered, "None at all."

"The Court: In other words, if you were accepted on this jury you would start out, we will say, from scratch, absolutely impartial?"

Mr. Kalbfuss: That is right.

The Court: You are willing to listen to the evidence on both sides, and to decide the case according

to the evidence as you hear it in the court room and the Law of California?

Mr. Kalbfuss: That is right.

The Court: Counsel may inquire." [R. 294.]

Counsel for petitioner then questioned. Mr. Kalbfuss and counsel was apparently satisfied that petitioner would receive a fair trial regardless of the previous newspaper publicity given to the case because counsel did not pursue the subject further than that brought out by the Court as above set forth.

Complaint is made that newspapers of November 21, 1949, carried the complete question and answer text of petitioner's confession. The record reveals that on November 21, 1949, the preliminary hearing of petitioner was held and in open court the entire confession was read as part of the evidence offered by the prosecution. This is the identical confession which petitioner complained was released by the District Attorney on November 18th. The confession having been offered in evidence became a matter of public record; as such the newspapers had a right to publish this confession. It is impossible to determine just how petitioner was prejudiced by the release of the confession by the District Attorney when, within a matter of three days, the entire confession was published by such newspapers as part of a public record. The evidence of petitioner's guilt was ample and there is no indication whatsoever that the petitioner was convicted because of any inflammatory reports of the crime appearing in the newspapers.

II.

Petitioner's Confession to the District Attorney Was Made Freely and Voluntarily and Its Use in Court Was Not in Violation of the Due Process Clause.

Under this point the petitioner states that the uncontradicted testimony in the record sets forth a clear cut example of a coerced confession to the District Attorney. The basis for this statement is that in the 70 minute period between his arrest and the time of the confession, a police officer waved a blackjack under petitioner's nose and kicked him in the shins, and a uniformed park officer in the presence of said police officer slapped the petitioner in the face.

Before the confession taken in the District Attorney's office was read in the evidence, the defense conducted a *voir dire* examination as to the voluntary character of the confession and called as a witness Mr. Miller, who caused Stroble's arrest.

Mr. Miller, a driver of a laundry truck, testified that he observed Stroble enter a bar and directed the attention of Carlson, a uniformed police officer, to Stroble. Miller saw Carlson pull Stroble off the bar stool and search him. Miller then accompanied Carlson and Stroble to the foreman's office in Pershing Square Park. There Carlson called his office reporting Stroble's arrest and then stood Stroble up, facing the wall, and Stroble put his hands up against the wall (illustrating). [R. 75.] Miller saw Carlson kick Stroble's feet out so that he would be off balance while the officer searched him. Two or three

times Stroble put his feet forward and Carlson kicked them back, striking the side of his shoe against the toes of Stroble. Miller testified:

"Q. You say his shoe slipped up in the kicking process and got him on the shin? A. It is possible. I cannot say for sure.

By the Court: Q. You don't know whether that happened or not? A. It is hard to remember things like that." [R. 76-77.]

Waiting the arrival of the homicide officers, Miller saw Carlson hold up his sap stick and he asked Stroble if he had ever seen one of these. Stroble made no reply and Carlson put it away. "That is all there was." Miller saw the Park Foreman slap Stroble with his open hand and knock his glasses off. [R. 77-78.] In answer to questions by the Court, Miller testified that the slap occurred three or four minutes after Stroble had been searched and while he was seated. The Court then asked, "Can you give us any apparent cause for it?" (the slapping), and the witness Miller replied, "I asked Stroble at one time if he was guilty, of what he was accused, and he mumbled something under his breath that sounded like 'I guess I am' and then it was after that he was slapped." [R. 79-80.]

Officer Carlson testified he had his attention directed to Stroble by Miller. Stroble was at that time drinking beer in a bar. Carlson placed Stroble under arrest and took him to the office of a park superintendent in a park immediately across the street from this bar. Stroble was searched by Carlson, who called the homicide bureau and, after the arrival of the homicide officers, Stroble was brought to the Wilshire Police Station where he was

turned over to Officers Brennan and Tullock, the investigating officers. [R. 54-55.]

On cross-examination Carlson testified that other than asking petitioner his name and giving him instructions during the search, he had no conversation with Stroble; that at the foreman's office no other member of the police department was present. The only persons present were Stroble, Carlson, the foreman and two other park employees, who left almost as soon as Carlson got to the office. Carlson testified that he did not strike Stroble or inflict any kind of physical injury on him. Carlson admitted having a blackjack on him, but did not recall showing it to Stroble. [R. 55-57.]

Dr. Marcus Crahan, a witness called by petitioner, testified he gave Stroble a physical examination on the afternoon of the day of petitioner's arrest; that he observed petitioner's feet and shins and saw no bruises of any kind on them. [R. 159-160.]

Detective Brennan testified that he first saw Stroble at the Wilshire Station on November 17, 1949, at about 12:30 P. M., as Stroble and Officer Carlson were coming up the stairs leading to the station house. Then, Brennan, Tullock, Stroble, and Carlson were joined by Captain Harry Didion and they entered an automobile. Carlson, Stroble and Brennan got in the back seat and Elliott and Didion got in the front seat. They immediately left for the District Attorney's office. At no time while Stroble was in the custody of these officers did he ask to communicate with any member of his family nor did he ask to communicate with a lawyer and, specifically, he did not ask to see Attorney John Gray or telephone John Gray. [R. 57-59.]

In the automobile on the way to the District Attorney's office, Sergeant Brennan had a conversation with Stroble that he made no promises to him of any reward or extended any hope of immunity to him and that he did not use force or threats of any kind whatsoever and that the statements made to him by Stroble were free and voluntary. Brennan testified that:

"When we first got into the car, we rode along about, I would say eight or ten blocks and the defendant Stroble (fol. 136) was seated between Officer Carlson and myself. I turned to the defendant and I said, 'How do you feel, Fred?' and he said, 'Oh, I feel okay.' I said, 'Where did you go?' He said, 'Well, after that terrible thing happened,' he said, 'I went down to the beach, down to Ocean Park. I was going to do away with myself.' I said, 'What do you mean by that terrible thing?' He said, 'when the little girl got killed.' I said, 'Do you mean when you killed the little girl?' He said, 'Yes.' He said, 'I was going down to the beach. I was going to jump in the ocean and commit suicide, but I decided I would have to pay on the other side so I may as well come back and pay on this side.' At this time I asked him what he intended to do when he came back, and he said, 'Well, I wanted to call Mr. Anderson and Mr. Rodehouse'—I believe, but I have forgotten the other name, but anyway it was the superintendent of the Helms—or rather the Van de Kamp's Bakery. He wanted to call those up before he gave himself up. He said, 'I went into the cafeteria—or the restaurant—to get a glass of beer. I thought I would get a glass of beer and then I would call upon them and then I would call the police up and give myself up.' That was about the extent of the conversation." [R. 61-62.]

Following the *voir dire* examination of Miller and Chief Thad Brown, Stroble renewed his objection that no proper foundation had been laid as to the free and voluntary character of the confession made to the District Attorney and the objection was overruled. [R. 80.]

Chief Brown testified that Stroble was brought into the office of the District Attorney on November 17, 1949, about fifteen minutes after Brown arrived there. Numerous officers and the members of the District Attorney's office were present. No force or threats were used against the petitioner nor were any promises of reward made or hope of immunity extended to Stroble. Stroble's statements were free and voluntary. Brown observed four or five girls working in relays taking stenotype notes of the conversation. [R. 62-63.] The entire conversation, from beginning to end, was recorded on a wire recorder. [R. 64.] The statement started about 12:58 P. M. and was concluded at about 3 P. M.

Throughout the questioning by a Deputy District Attorney, Stroble was seated to the right of the District Attorney who was seated behind his desk. The stenotype operators were seated to the right of Stroble. [R. 139.] Several breaks were taken to give Stroble an opportunity to rest and when changes of stenographers would be made, he was asked several times if he desired to rest before resuming the questioning. [R. 140.] (When transcribed the questions asked of and the answers given by Stroble consisted of 62 pages of single space typing [R. 273.])

Brown further testified that during the questioning of Stroble he was asked if anybody hit or slapped or kicked or threatened to hit or slap or mistreat him and to each of said questions he answered in the negative. When

asked if he had any complaints at all the way the officers had treated him, he answered, "No, nothing at all. Wonderful." [R. 128.] Stroble stated that he thought Officer Carlson had treated him all right and that as far as he knew none of the police officers who brought him to the District Attorney's office had abused him. [R. 127.] When Stroble was asked if he had freely and voluntarily told about the case, Stroble replied: "Everything what is. Nothing I go back. I want to give myself up anyway, but I was ready for the jump over; then I thought I cannot get away from punishment, because I paid the other side. Might as well as pay here too. That was my opinion, that's why I came down." [R. 128.]

Mr. David E. Brownson, a radio technician investigator in the office of the District Attorney, testified that he was in the office of the District Attorney on November 17, 1949, and present during the entire time that Stroble's statement was taken. In the District Attorney's office was a Webster Model 180 Wire Recorder and a microphone on the District Attorney's desk. [R. 142.] This machine recorded all of the conversation of Mr. Stroble and those who questioned him. This recording machine was started at 12:50 P. M. and approximately five minutes later Stroble entered the office. The statement of Stroble was concluded and the machine was stopped at about one minute after 3 P. M. [R. 143.] Brownson testified that no force or threats of force or any promises were made to Stroble and all Stroble's answers were free and voluntary. [R. 146.] Brownson testified that there was absolutely no change of any kind in the recording, except that due to a break in the wire, about six words were eliminated. No material was transposed; nothing was added, nothing was taken away and there was no dubbing. [R. 147.]

The original recording in its entirety was played for the jury.

In an effort to prove that Stroble did not have the mental capacity to form the intent necessary to commit murder in the first degree and thus reduce the crime to murder in the second degree, Stroble called several experts.

Dr. Crahan was called by Stroble and his attorney, Mr. Matthews, asked Dr. Crahan: "Did he relate to you that he had murdered a girl? A. Yes, he did." [R. 157.]

On cross-examination of Dr. Crahan, Stroble's witness, Crahan testified, among other things:

"He managed to push her back to the bed and took off her panties, but as he started to play with her she screamed. This scream incidentally frightened him terribly and he thought of this act's danger if he was apprehended, in view of the police charges against him. He placed his hands around the child's throat to stop her screaming and held it there until he realized she was unconscious. Not certain that she was dead, he went to get a necktie and garrotted his victim."

Dr. Crahan further testified that Stroble told him he went to the kitchen and brought back a hammer and hit the child on the head with this hammer several times. Still not certain she was dead he went back to the kitchen and got an ice pick with which he stabbed her through the heart. Not convinced that she was dead and not suffering, he then went back to the garage and brought an ax with which he struck the child at the base of the spine and once over the neck.

"It was then that he thought of a bull fight that he had seen in Mexico and of a small dagger used at the

kill and again returned to the kitchen to get a short knife which he attempted to plunge into the back of her neck, but was unable to puncture the neck more than approximately one half inch." [R. 165-166.]

Stroble also called as his witnesses, Dr. Jacob Peter Frostig, who examined Stroble on December 31, 1949 [R. 188-189]; Mr. Carl Palmberg, a clinical psychologist [R. 198]; and Dr. Victor Parkin, who examined Stroble on December 22, 1949. [R. 217-220.] A reading of the testimony of these witnesses called by Stroble will reveal that the statements made to them by Stroble as to the killing of the child were substantially the same as those made in the District Attorney's office and to Dr. Marcus Crahan.

Dr. Edwin E. McNeil examined Stroble on December 14, 1949 [R. 214] and Dr. Robert E. Wyers examined Stroble on December 11 and on December 18, 1949. [R. 221-222.] These doctors were appointed by the court to examine Stroble and were called by the people and a reading of their testimony discloses that Stroble's statements to them were substantially the same as made to the District Attorney and the other doctors above referred to.

On the morning of November 18, 1949, at about 10 A. M., Stroble was brought before the magistrate and arraigned and the magistrate appointed the City Public Defender to represent him for the purpose of the preliminary hearing. [R. 275-276.] At the arraignment Deputy District Attorney John Barnes gave a copy of the complete statement taken from Stroble on the previous day at the District Attorney's office to the Public Defender. [R. 275.]

The record reveals that John D. Gray, Stroble's present attorney, consulted with Stroble on the night of November 17, 1949. [R. 180.] Thus it appears that the statements made by Stroble to Dr. Frostig, Mr. Palmberg, Dr. Parkin, Dr. Wyers and Dr. McNeil, were made after consultation with Attorney Gray and after he was arraigned before the magistrate and after he was arraigned for trial in the Superior Court. We may add that Mr. Matthews, Stroble's trial counsel, who had full and complete knowledge of all the facts, and who was present at all stages of the trial, addressed the jury at the close of the case in the following manner:

"Mr. Matthews: I don't know, ladies and gentlemen, as I told you on *voir dire*, what more a human being can do than come forward say I did this terrible thing, and here is how I did it. I don't know why I did it. I can't believe I did it, but here it is. Do you give this man no credit for his confession? Where there is no duress used by the state, don't you give him any credit? Isn't that an indication of something by way of rehabilitation? What more could you do, if you committed a terrible crime, than Fred Stroble did, in attempting to expiate it?" [R. 299.]

Furthermore, after the jury returned its verdict of guilty of murder in the first degree, a discussion was had in chambers of the trial judge. All counsel were present, including Mr. Cuff, the public defender and his deputy, Mr. Matthews. Mr. Cuff was addressing the judge and relating a conversation he had with Mr. Matthews on a previous occasion, relating to a conversation that Matthews

told him he (Matthews) had with Dr. McNeil, and the following transpired:

"Mr. Cuff: * * * However, getting back to the conversation with Mr. Matthews, he said he talked to Dr. McNeil. I said what did you say? He said I told him we were at a standstill [fol. 1281] that we had confessions from Stroble; that he would confess to anybody that would talk to him; that we couldn't stop him from making confessions to the doctors or anybody else; * * *." [R. 388.]

In this case the court, after hearing all the evidence relating to the manner of obtaining Stroble's confessions, determined that sufficient foundation had been laid for their admission. The evidence was then presented to the jury and the question as to their character, whether voluntary or involuntary, was submitted to the jury by the court's instructions. [R. 1-4.] From the record here presented, we may assume that both court and jury found that all confessions were free and voluntary.

This Court has reversed convictions because of the admission of confessions elicited after intensive questioning by relays of officers for hours a day over periods of days, as illustrated in *Watts v. Indiana* (1949), 338 U. S. 49 (69 S. Ct. 1347, 93 L. Ed. 1801); *Turner v. Pennsylvania* (1949), 338 U. S. 62 (69 S. Ct. 1352, 93 L. Ed. 1810); *Harris v. South Carolina* (1949), 338 U. S. 68 (69 S. Ct. 1354, 1357, 93 L. Ed. 1815). Other cases could be cited.

In *Snyder v. Massachusetts* (1933), 291 U. S. 97 (54 S. Ct. 330, 78 L. Ed. 674, 90 A. L. R. 575), it is stated:

"Due process of law requires that the proceedings shall be fair, but fairness is a relative, not an abso-

lute concept. It is fairness with reference to particular conditions or particular results." (U. S. S. Ct. p. 116.)

"The law, as we have seen, is sedulous in maintaining for a defendant charged with crime whatever forms of procedure are of the essence of an opportunity to defend. Privileges so fundamental as to be inherent in every concept of a fair trial that could be acceptable to the thought of reasonable men will be kept inviolate and inviolable, however crushing may be the pressure of incriminating proof. But justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true." (U. S. S. Ct. p. 122.)

The reasoning of Mr. Justice Cardozo, in the *Snyder* case, *supra*, is applicable to the instant case, when he said:

"A fertile source of perversion in constitutional theory is the tyranny of labels. Out of the vague precepts of the Fourteenth Amendment a court frames a rule which is general in form, though it has been wrought under the pressure of particular situations. Forthwith another situation is placed under the rule because it is fitted to the words, though related faintly, if at all to reasons that brought the rule into existence." (U. S. S. Ct. p. 114.)

Respondent does not agree with the label "coerced" placed upon the confession by Stroble made to the District Attorney. There is no evidence Stroble was kicked on the shins by anybody at any time. There is evidence that at the office of the park foreman, the arresting officer kicked Stroble's toes with the side of his shoe; that the

officer waved his blackjack under Stroble's nose; that after Miller, not an officer, asked Stroble if he is guilty, and Stroble mumbled, "I guess I am," then the park foreman slapped Stroble's face once with his open hand. The slap was an unfortunate and unforeseen incident done by a person who was not connected with the police department. At no time did the arresting officer, Carlson, question Stroble concerning the details of the murder or seek a confession from him. There is nothing in this record that would indicate that anything done by the arresting officer or anyone else at the time of Stroble's arrest, operated on his mind and induced him to make his confession later to the District Attorney. Stroble did not testify at the trial, and when asked in the District Attorney's office "Have you got any complaints at all the way the officers have treated you?" He replied: "No, nothing at all. Wonderful." [R. 128.]

In *Lisenba v. California* (1941), 314 U. S. 219, 86 L. Ed. 166, it was established by the evidence that the petitioner had been repeatedly and persistently questioned at intervals during the period from April 19 to April 21. During that time he was slapped once by one of the officers conducting the questioning, and he made no confession. However, on May 2nd he did confess. The Supreme Court held that the use of his confession at the trial did not constitute a violation of the due process clause.

Under the record here presented, Stroble was not denied due process of law by the admission of his confession in evidence at his trial. The Supreme Court of California stated in the case of *People v. Stroble* (1951), 36 Cal. 2d 615, at 617, that:

"We have concluded that defendant was fairly tried and properly convicted."

III.

Stroble Was Not Denied Effective Aid of Counsel.

Petitioner asserts that he was denied the effective aid of counsel at a key point in the course of the trial at the behest of the trial judge. He states that from the time of arraignment to the appeal he had four counsel consecutively and at least two of them, at various stages of the proceedings, demonstrated a sincere concern for the protection of all his rights; that at one or more vital stages in the proceedings, no one of the four counsel represented him effectively.

Stroble concedes that he was arraigned in the Superior Court in the State of California, in and for the County of Los Angeles, and that "* * * The County Public Defender was appointed as his counsel and Deputies Public Defender Matthews and Hill assigned to the case." (Pet. Br. p. 2c.)

Stroble concedes also that "* * * the Deputy Public Defender, Al Matthews, during the course of the jury trial on the murder charge conducted the defense with energy and diligence, and the confidence engendered by his work is attested to in the words of the petitioner on the motion for new trial. Nor is there any question that petitioner was under the impression that Matthews was his attorney and the person on whom he relied for counsel and advice." (Pet. Br. pp. 23-24.)

Stroble states that the record reveals that with the exception of Deputy Public Defender Hill's participation in the argument to the jury, Hill was not considered by either the court or Stroble to be "the effective counsel" for Stroble. This statement is not supported by the record.

The record throughout reveals that Mr. Hill was a very "effective counsel" in protecting Stroble's rights. Throughout the trial Mr. Hill interposed objections to questions asked on direct examination; entered into stipulations; cross-examined the people's witnesses; called and examined witnesses for the defendant; moved to set aside the information [R. 266]; was present and took part at defendant's arraignment [R. 292-294]; and, among other things, accepted the jury as constituted for the trial. [R. 299.]

Mr. Gray, Stroble's present attorney, in presenting his motion for a new trial [R. 314], moved the court to modify the judgment and find the defendant guilty of a lesser degree, of second degree murder, "* * *" and in support of the motion under this subdivision, I invite the court's attention to masterful argument of Mr. Hill in this regard." [R. 320.]

In *People v. Stroble* (1951), 36 Cal. 2d 615, 620, the Supreme Court referred to Mr. Hill, one of Stroble's counsel, as the "(Veteran Deputy Public Defender John J. Hill.)" and the court also stated "During the trial of the issue of not guilty Deputies Matthews and Hill of the Public Defender's office handled the defense in the court room." (P. 628.)

Stroble contends that Mr. Cuff, the Public Defender, was not his counsel and therefor had no right to inject himself into the case.

The honorable trial judge made this statement:

"When a Public Defender in a county is appointed to defend, it is the Public Defender who is counsel just exactly as the District Attorney is counsel for the People, and the delegation as to who shall be the

particular person to represent the client or who shall represent the (fol. 1176) People is left to the head of that office." [R. 323.]

Mr. Cuff testified as a witness in behalf of the People on Stroble's motion for a new trial and stated that he is the Public Defender of Los Angeles County and the Stroble case came to his office by assignment from the Superior Court. [R. 325.] Cuff visited Stroble and advised him that he, Hill and Matthews worked night and day on the case [R. 327]; that virtually every evening all the testimony and evidence was gone into, and Mr. Cuff made a complete survey of the proposed testimony to be adduced on the plea of not guilty by reason of insanity. [R. 329-330.] Mr. Cuff testified that having all the available evidence on this issue, Mr. Cuff felt that the plea of not guilty by reason of insanity was futile and felt justified in even withdrawing the plea of insanity entirely. [R. 333.]

A Public Defender appointed to represent a defendant accused of crime becomes the attorney for said defendant to the same extent as if regularly retained by him: (*In re Hough* (1944), 24 Cal. 2d 522, 528-531.)

The Supreme Court of California stated:

"This court can take judicial notice, too, that it would be difficult to find in California any lawyers more experienced or better qualified in defending criminal cases than the Public Defender of Los Angeles County and his staff." (*People v. Adamson* (1949), 34 Cal. 2d 320, 333.)

In the favorable light that the Public Defender's office is looked upon by the courts of California, we shall look to the record to ascertain if Stroble was "denied effective

aid of counsel" at any "key point" in the course of the trial.

It is Stroble's contention that the "key point" at which he was not represented by counsel occurred at the time when Stroble waived a jury trial and submitted the matter to the court for decision on his plea of not guilty by reason of insanity. The record does not support this contention.

After Stroble was found guilty by a jury of murder in the first degree and at the commencement of the hearing on his plea of not guilty by reason of insanity, the trial court called the attorneys into chambers and requested the Public Defender, Mr. Cuff, to be present. In chambers, with all counsel present, the court accused Mr. Matthews of loud talking in the presence of the jury while presenting an offer of proof at the bench, and also with other conduct which the court stated was unprofessional conduct. [R. 371-393.]

At the conclusion of the discussion in chambers, the court reconvened and Mr. Matthews stated to the court that his offer of proof had been completed and asked for a recess until 2 o'clock. [R. 225.]

At 2 o'clock court was called to order and the judge stated "Record shows counsel and the defendant present." [R. 225.] Then, Mr. Hill stated to the court that he had information conveyed to him that Stroble desired to withdraw the case on the second issue now before the court on the plea of not guilty by reason of insanity, waiving a jury trial, and that that issue be tried by the court without a jury. In open court, Stroble answered twice that that is correct. The record shows all parties waived a jury. [R. 225-226.]

After the above procedure a stipulation was entered into that the court, sitting without a jury, may determine the issue of not guilty by reason of insanity upon the testimony that had theretofore been heard on the general issue and the court could consider as evidence in the case the reports filed by the psychiatrists. [R. 226.]

The court, after hearing and considering the evidence, presented under the stipulation, found Stroble sane. [R. 303, 370.]

Under the record here presented, Stroble was not denied the effective aid of counsel nor due process of law.

"Asserted denial is to be tested by an appraisal of the totality of facts in a given case. That which may, in one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, may, in other circumstances, and in the light of other considerations, fall short of such denial." (*Betts v. Brady* (1942), 316 U. S. 454, 464, 86 L. Ed. 1595, 1602.)

Considering the "totality" of the evidence and the participation of Stroble's counsel, the Public Defender and his deputies, from the moment of their assignment up to the time that present counsel, Mr. Gray, was substituted for them in this case, the record demonstrates that Stroble was well, ably and diligently represented by experienced counsel at every stage of the proceedings.

And, we may add, that the Public Defender had the authority to enter into a stipulation pertaining to the submission of the evidence above referred to on the insanity issue. This stipulation was made in Stroble's presence and fully understood by him. (*People v. Wilson* (1947), 78 Cal. App. 2d 108, 119-120.)

IV.

Each Particular Aspect of the Procedure Leading to Conviction, Considered Separately or Together Would Not Invalidate the Conviction.

Stroble states that "The question before this court can only be decided from a consideration of the whole course of the proceedings and cannot be decided by the presence or absence of any single factor." With this statement, Respondent agrees.

1. Delay in Arraignment.

The Supreme Court of California in *People v. Stroble* (1951), 36 Cal. 2d 615, at 624-627, gave the subject here under discussion extended consideration. The court, among other things, states:

"Defendant's first two confessions (one made in the district attorney's office and one made shortly thereafter to the County Jail physician), were obtained during a period when rights of defendant under the state Constitution and Penal Code were being flagrantly violated."

Neither the Supreme Court of California, nor the petitioner in his brief in this case, mention Stroble's confession to Sergeant Brennan in the automobile on the way to the District Attorney's office. We have set forth this confession and the circumstances under which it was made under Point II of this brief. There is nothing in our law which requires that the defendant, even though in the custody of officers, must be given any advice by the officers before making the confession. (*People v. Hoyt* (1942), 20 Cal. 2d 306, 314.)

In the *Stroble* case, *supra*, the Supreme Court said:

“Theoretically, taking defendant promptly before a magistrate and permitting Mr. Gray to consult with defendant immediately upon his arrival at the district attorney’s office, might have been of considerable importance to defendant on his subsequent trial . . . As the situation actually developed, however, it became obvious that defendant did not wish, or was not able to remain silent. After he had consulted with Mr. Gray and with attorneys from the public defender’s office defendant continued repeatedly to make detailed confessions. Each of these confessions appears to be an attempt by defendant, to the best of his ability, to recount the entire truth as to the killing, including his state of mind at the time. In these circumstances the violation of his constitutional and statutory rights immediately after his arrest appears not to have affected the outcome of defendant’s trial.” (P. 626.)

The Supreme Court of the United State has said:

“So far as due process affects admission before trial of a defendant the accepted test is their voluntariness. This requires appraisal of the facts of each particular case open to consideration by the Court.” (*Gallegos v. Nebraska*, U. S. Sup. Ct. L. Ed. Adv. Op. (Dec. 17, 1951), Vol. 96, No. 3, p. 82.)

From an appraisal of the facts in this case the trial court and the State Supreme Court found that the delay in bringing Stroble before a magistrate did not violate due process.

2. There Was No Violation of Due Process in Refusing to Permit Gray to Consult Defendant in the District Attorney's Office.

Gray testified upon the motion to set aside the information that he came to the District Attorney's office at 2:42 or 2:43 P. M. on the afternoon of Stroble's arrest.

[R. 281-283.] The District Attorney completed taking Stroble's statement at about 3:00 P. M. on the same day.

[R. 143.] At the trial, some weeks later, Gray testified that he was mistaken as to the time of his arrival at the District Attorney's office and that it was at 1:43 P. M. [R. 176.]

On the night before Stroble's arrest, at the police station and at the home of Hausman, Stroble's son-in-law, Gray told five witnesses [R. 206, 207, 208, 209] that he "does not and will not represent Stroble in the murder case, that his client is Hausman and he just wants to satisfy himself that Stroble committed the murder." [R. 206.]

Following the confession in the District Attorney's office, on the same day, Gray said to Mr. Roll, Chief Deputy, that he did not represent Stroble; that the Hausmans had heard that Stroble confessed and "he was there just to find out from Stroble if this was true." [R. 199.] Gray told Mr. Barnes, Assistant District Attorney, "He said he just wanted to see Mr. Stroble and ask him whether or not he committed the murder in order to re-

port to Mr. Hausman, because he had been instructed by Hausman that if Stroble had done that [fol. 780] murder, he, Hausman, wanted absolutely nothing to do with him." [R. 204.]

On cross-examination of Gray he testified that he did state that he did not represent Stroble on the murder charge and under no circumstance would he represent him on the murder charge. It was Gray's recollection that he said that after Stroble had been apprehended. [R. 181, 186.]

Whatever conflict there is in the evidence as to whether or not Gray was Stroble's attorney on the murder charge at the time of his arrest or confession was a question of fact. Under the Constitution of California the trial court is the constitutional arbiter of the ultimate facts in issue and the reviewing court cannot substitute its own findings in lieu thereof. (*People v. Pruitt* (1942), 55 Cal. App. 2d 272, 275.)

Assuming that Gray was Stroble's counsel at the time of his arrest on the murder charge, and Gray was denied the opportunity to consult Stroble in the District Attorney's office, it does not follow that Stroble's conviction was offensive to the common and fundamental ideas of fairness and right.

• "As applied to a criminal trial, denial of due process is the failure to observe the fundamental fairness essential to the very concept of justice. In order to declare a denial of it we must find that the absence of that fairness fatally infected the trial; the

acts complained of must be of such quality as necessarily prevent a fair trial." ^A (*Lisenba v. California* (1941), 314 U. S. 219, 86 L. Ed. 166.)

Under all the facts and circumstances of this case, and in view of the fact that Stroble did not request the presence of Gray, or any other attorney, on the day he was arrested and confessed, it does not appear that the outcome of his trial was in anywise affected. The Supreme Court of California held that:

"We have concluded that defendant was fairly tried and properly convicted." (*Stroble, supra*, p. 617.)

3. The Admission Into Evidence of the Confession Exacted While in the District Attorney's Office Was Not a Denial of Due Process.

Under Point II of this brief we have presented our views on the subject here discussed. There is no need for us to repeat what has been said, other than to point out that the case of *McNabb v. U. S.*, 318 U. S. 332, cited by petitioner, was considered by this Court in *United States v. Carignan* (1951), U. S. Sup. Ct., L. Ed. Adv. Ops., Vol. 96, No. 2, p. 57, wherein, among other things, this Court stated:

"Another extension of the McNabb rule would accentuate the shift of the inquiry as to admissibility from the voluntariness of the confession to the legality of the arrest and restraint. Complete protection is afforded the civil rights of an accused who

makes an involuntary confession or statement when such confession must be excluded by the judge or disregarded by the jury upon proof that it is not voluntary. Such a just and merciful rule preserves the rights of accused and society alike. It does not sacrifice justice to sentimentality. An extension of a mechanical rule based on the title of a confession would not be a helpful addition to the rules of criminal evidence. We decline to extend the McNabb fixed rule of exclusion to statements to police or wardens concerning other crimes while prisoners are legally in detention on criminal charges."

4. There Was No Coerced Confession Used.

Under Point II of this brief we have presented our views on this subject.

5. The Prosecution Inspired Publicity.

This subject is answered under Point I of this brief.

6. The Substitution of Counsel.

This subject is answered under Point III of this brief.

In addition to what we said under Point III, we would add that Stroble's trial was not offensive to the concept of due process; the defendant had the effective aid of counsel; his counsel performed his full duty intelligently and well. The entire record is the best evidence that due process was not denied. (*Avery v. Alabama* (1939), 308 U. S. 444, 446-447, 84 L. Ed. 377; *Betts v. Brady* (1942), 316 U. S. 455, 86 L. Ed. 1595.)

Conclusion.

When the record is examined relative to the matters complained of, either singly or collectively, and the opinion of the Supreme Court of California is considered, we submit that no rights guaranteed by the Fourteenth Amendment to the Constitution of the United States were violated and the judgment should stand.

Respectfully submitted,

EDMUND G. BROWN,
Attorney General of California,

WILLIAM V. O'CONNOR,
Chief Deputy Attorney General,

FRANK W. RICHARDS,
Deputy Attorney General,

S. ERNEST ROLL,
*District Attorney of
Los Angeles County,*

ADOLPH ALEXANDER, and
JEREMIAH J. SULLIVAN,
*Deputies District Attorney,
Attorneys for Respondent.*

Service of the within and receipt of a copy
thereof is hereby admitted this.....day of
February, A. D. 1952.

IN THE
Supreme Court of the United States

Office Supreme Court, U. S.

FILED

JUN 22 1951

CHARLES ELMORE CROPLEY
CLERK

October Term, 1950

No. 513-150373

FRED STROBLE,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

RESPONDENT'S OPPOSING BRIEF.

EDMUND G. BROWN,

*Attorney General of the State of
California,*

WILLIAM V. O'CONNOR,

Assistant Attorney General,

FRANK W. RICHARDS,

Deputy Attorney General,

600 State Building,

Los Angeles 12, California,

Attorneys for Respondent.

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IN THE
Supreme Court of the United States

October Term, 1950
No. 517, Misc.

FRED STROBLE,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

RESPONDENT'S OPPOSING BRIEF.

Statement of Case.

Petitioner was charged by an information filed in the Superior Court of the County of Los Angeles, State of California, with the murder of Linda Joyce Glucoft, a six-year-old child. To this charge petitioner pleaded not guilty and not guilty by reason of insanity. He was represented by the Public Defender. The trial resulted in a verdict by the jury of murder in the first degree on petitioner's plea of not guilty. He then waived trial by jury on his plea of not guilty by reason of insanity and was tried by the Court and was adjudged sane. The death penalty was thereafter imposed. The Supreme Court of California affirmed the judgment. (*People v. Stroble*, 36 A. C. 578, 226 P. 2d 330.)

Jurisdiction.

Petitioner seeks to have the judgment of the Supreme Court of California reviewed by this Honorable Court upon his claim that there are rights, privileges and immunities involved herein under the Constitution of the United States:

The matters specially set forth in his petition for a writ of certiorari are that at his trial and over objection the prosecution put in evidence a confession obtained by physical abuse and psychological torture; that he was denied a fair trial by the conduct of the district attorney who, petitioner asserts, actively solicited and enlisted the aid of the press to create a trial by newspaper; that the trial judge allowed the televising of portions of the trial and the taking of news photographs during the trial; that he was deprived of counsel of his choice during the trial; that the trial court failed to take evidence on petitioner's plea of not guilty by reason of insanity, and that petitioner was forced to trial on an information which was based solely upon an involuntary confession.

Statement of Facts.

Linda's body was found behind an incinerator in the rear yard of a residence occupied by petitioner's daughter and son-in-law, Mr. and Mrs. Hausman, and their child, Rochelle. The body was wrapped in a blanket and covered with several cardboard boxes. [Rep. Tr. pp. 50, 51, 52, 55, 56.] An axe and a knife were near the body and the child's panties were in the incinerator. [Rep. Tr. pp. 56, 57, 59, 60.] A necktie was wound twice around her neck. [Rep. Tr. p. 71.] There were multiple wounds on the right side of her head and abrasions on the temporal region. [Rep. Tr. p. 73.] Behind the right ear there was a laceration, also on the back of her head. [Rep. Tr. pp. 74, 80.] Into the neck between the sixth and seventh cervical vertebrae there was a deep laceration which lacerated the spinal cord. [Rep. Tr. p. 82.]

It was the opinion of the autopsy surgeon that the immediate cause of death was asphyxia due to strangulation [Rep. Tr. p. 68], that the child was alive when the marks of violence were inflicted on the child's forehead and the two puncture wounds were made in her chest and one in the back, but that she was dying when she suffered the six head fractures and was dead when she received the wound in back of the neck that severed the spinal cord. [Rep. Tr. pp. 100-103.] It was also the opinion of the autopsy surgeon that the abrasions on the child's back could have been caused by a glancing blow from the metal end of the axe [People's Exhibit 9], that the two semi-circular lacerations on the child's temple could have been caused with a weapon similar to the ball peen hammer [People's Exhibit 8]; that the wound in the back of the neck which severed the spinal column, could have been inflicted with a weapon similar to the knife [People's

Exhibit 6], and that the two puncture wounds on the child's chest and the one on her back, could have been caused by an ice pick such as People's Exhibit 7. [Rep. Tr. pp. 97-99.]

Linda and Rochelle were playmates and lived across the street from each other. [Rep. Tr. pp. 21, 30, 31.] On the afternoon of November 14, 1949, Linda went to play with Rochelle, but Rochelle had gone to a party with her mother, leaving petitioner at home. [Rep. Tr. pp. 15, 17, 30, 31.] Petitioner did not live with his daughter, but often visited with her, staying a couple of days on each visit. Petitioner knew Linda and they were seen together on occasions. [Rep. Tr. p. 27.] When Mrs. Hausman returned home around 6 o'clock in the afternoon from the party, petitioner was not there, and she noticed people in the neighborhood of her home. [Rep. Tr. p. 25.] When Linda did not return home at 5 o'clock, her mother started to look for her, going to "everybody's" home. At 5:30 o'clock she called the police. The next morning she learned that Linda's body had been found. [Rep. Tr. p. 33.]

Between 1:30 o'clock and 2 o'clock in the morning of November 15, 1949, petitioner registered at a hotel in Ocean Park under the name of Frank Hoff. [Rep. Tr. pp. 34-36.] He stayed there three nights. [Rep. Tr. p. 41.] At 11:50 o'clock a.m., on November 17, 1949, Mr. Miller, a linen service driver, recognized petitioner on Hill Street near Fifth Street in the City of Los Angeles and followed petitioner to a bar and then told Officer Carlson at the corner that the man they were looking for was in this bar. [Rep. Tr. pp. 156, 157.] Officer Carlson took petitioner to the office of the park

foreman in Pershing Square where he searched petitioner and then called the homicide division. [Rep. Tr. p. 125.]

Mr. Miller went with petitioner and Officer Carlson to the office of the park foreman, and he testified as a witness for the defense that Officer Carlson stood Stroble facing the wall and kicked Stroble's feet out so he would be off balance during the search; that two or three times Stroble put his feet forward and the officer with his foot kicked Stroble's feet back out again, kicking Stroble's feet on the toes "and possibly it slipped off and he hit his shin once or twice," but he didn't remember if the officer kicked Stroble on the shin, that "He probably did. I cannot say. I don't remember" [Rep. Tr. pp. 158, 159]; that Officer Carlson while waiting for the homicide officers was pacing back and forth and took out his sap stick and held it under Stroble's nose and asked Stroble if he had ever seen one of these; that he didn't believe Stroble made any answer; "That is all there was and Officer Carlson put his sap stick away again" [Rep. Tr. pp. 160, 161]; that he (witness) asked Stroble if he was guilty of what he was accused and Stroble mumbled something under his breath that sounded like "I guess I am"; that the park foreman was there and had not said anything; but after Stroble said, "I guess I am," the park foreman slapped Stroble and knocked his glasses off. [Rep. Tr. pp. 163, 165, 166.]

Officers from the homicide division arrived and took petitioner to the Wilshire Police Station [Rep. Tr. pp. 124, 125], turned around immediately and drove to the District Attorney's office in the Hall of Justice. [Rep. Tr. pp. 130, 134.] After they had proceeded for eight or ten blocks, Officer Brennan asked petitioner how he felt and petitioner said, "Oh, I feel okay." He was asked,

"Where did you go?" and petitioner said, "Well, after that terrible thing happened I went down to the beach, down to Ocean Park. I was going to do away with myself." He was asked, "What do you mean by that terrible thing?" and petitioner said, "When the little girl got killed." Officer Brennan said, "Do you mean when you killed the little girl?" and petitioner said, "Yes, I was going down to the beach. I was going to jump in the ocean and commit suicide but I decided that I would have to pay on the other side so I might as well come back and pay on this side."

Officer Brennan asked him what he intended to do when he came back and petitioner said, "Well, I wanted to call Mr. Anderson and Mr. Rodehouse," superintendent of Van de Kamp's Bakery, before he gave himself up; that "I went into the cafeteria—or the restaurant—to get a glass of beer. I thought I would get a glass of beer and then I would call them up and then I would call the police up and give myself up." [Rep. Tr. pp. 135, 136.]

At 1 o'clock p.m., November 17, 1949, a statement from Fred Stroble was taken in the office of the District Attorney, Room 649, Hall of Justice, by Deputy District Attorney Fred N. Henderson. [Rep. Tr. p. 166.] Numerous officers were present. [Rep. Tr. p. 137.] Officer Brown testified that there was no force or threats used on petitioner, no promises of reward or hope of immunity extended to him, and the statements he made were free and voluntary. [Rep. Tr. p. 138.] It was stipulated that prior to taking a statement from petitioner he was not taken before a magistrate. [Rep. Tr. p. 143.] Nineteen persons were present when the statement was taken, and all of them were either members of the staff of the District Attorney or police officers, and there were five dif-

ferent stenographers in relays. [Rep. Tr. p. 144.] Petitioner objected to the statement being used in evidence on the grounds, (1) that no proper foundation had been laid as to its free and voluntary character, (2) that there has been a violation of due process as provided for in the Federal Constitution, and (3) that the *corpus delicti* of first degree murder has not been established by independent evidence. [Rep. Tr. pp. 150-152.] The objection was overruled. [Rep. Tr. p. 153.] Thereupon petitioner called Mr. Miller as a witness on *voir dire* examination, whose testimony we have hereinabove mentioned. [Rep. Tr. p. 156.] This evidence was presented "in furtherance of the situation with reference to the foundation not being laid with reference to the introduction of the purported statements in the confession of the defendant." [Rep. Tr. p. 151.]

The substance of the petitioner's statement read in evidence is as follows:

Petitioner was born October 7, 1881, in Austria and came to the United States in 1901. [Rep. Tr. p. 168.] He worked as a baker for Van de Kamp's for 21 years, but has not worked since 1946. [Rep. Tr. pp. 172, 173.] He has known Linda (deceased) a couple of years, ever since the Hausmans have lived at 2003 South Crescent Heights. Mrs. Hausman is his daughter and Rochelle and Fred are his grandchildren. [Rep. Tr. pp. 170-173.] Linda lived across the street and every day she came over to Rochelle's house and the children played in the back yard where they have a swing, slide, and all kinds of exercises. [Rep. Tr. pp. 174, 175.] About 3:15 o'clock on Monday, November 14, 1949, Rochelle left the house with her mother and went to a party. [Rep. Tr. pp. 177,

183.] He was left alone in the house and while sitting in the front room drinking whiskey, Linda came over and he gave her a chocolate bar. [Rep. Tr. pp. 185, 186.] They went into the children's bedroom. Linda said, "Where is Rochelle?" [Rep. Tr. p. 187.] He squeezed and kissed Linda. [Rep. Tr. p. 188.] He was sitting on the bed and she was in front of him. He put his finger under her dress and tickled her. She said, "That's not nice." [Rep. Tr. p. 189.] He put his finger about an inch inside her vagina. She didn't like it and said, "Where's Rochelle?" He told her that Rochelle was not home. She wanted to go out and play and he said, "Let's play here a little bit." He laid her on the bed on her back. Her legs were together. He said, "Let's play," and she said, "No, I'm going outside." [Rep. Tr. pp. 190, 191.] He put his hand under her dress and his finger in her vagina. She said, "I don't like that; I want to go out in the yard, and want to play outside." He lay on top of her and she started to holler. He said, "Don't holler. I don't do you no harm." She attempted to wrestle away and he held her down. [Rep. Tr. p. 192.] She didn't want to give in and started to holler. He put his hands on her throat and squeezed until she became quiet. He got up to get a coat and she started squirming around kind of lively and wanted to holler. He looked around and saw some neckties behind the dresser. [Rep. Tr. pp. 193, 194.] He wanted to make sure that she "wouldn't come back," so he took three or four steps and got a necktie, came back, put it around her neck and

tied it. [Rep. Tr. p. 195.] When he didn't notice any life and thought she was dead, he took a couple of drinks. She started moving around, so he went to the kitchen and got a hammer out of a drawer, returned to the bedroom, and took Linda off the bed, laid her on a blanket, and folded her into the blanket. He knew she wasn't dead because he talked to her. [Rep. Tr. pp. 196, 197.] He selected the left temple as the place to hit her with the hammer because if he hit her there it would be impossible for her to live any longer. [Rep. Tr. p. 198.] After he hit her on the forehead with the hammer she moved. He got scared that she was still alive, so he wrapped her up. He knew that he couldn't leave her in the room, so he dragged her in the blanket to the incinerator in the back yard. [Rep. Tr. pp. 199, 200.] He was not sure she was dead, so he went to the kitchen and got an ice pick, returned and felt where her heart was and pushed the ice pick into her body once in front and he thought twice in the back because he wanted to make sure that he hit the heart and she would not suffer. [Rep. Tr. p. 200.] He then went to the garage, put the ice pick on a shelf, and got an axe. He figured that if she was not dead he might as well finish it because the damage was done. He then hit her on the back of the head and backbone with the side of the metal part of the axe. [Rep. Tr. pp. 202, 203.] He left the axe by the incinerator and went to the kitchen where he got a knife with a blade two inches wide. He wanted to make sure Linda was dead, so he stabbed her in the back of the neck with this knife. He had seen

bullfights in Mexico and after the bull is dead a short knife is thrust right behind the bull's neck and this came to his mind about Linda because he wanted to make sure she was dead. [Rep. Tr. pp. 204-206.] He then covered her with all the cardboard boxes he could find, about three or four, went into the house, put on his coat, went to Venice Boulevard, which was about a block away, and to Ocean Park. [Rep. Tr. p. 208.] Before leaving the house he saw Linda's panties on the floor in the children's bedroom, and he put them in the incinerator. He had previously fondled Linda, which started when she was about five years of age, but this was the first time he had inserted his finger in her vagina. [Rep. Tr. pp. 212, 213.] When he was in the bedroom with Linda and she was "kinda" screaming and wrestling around, he thought about the fact and was afraid that she might tell her mother what had happened. He never had any difficulty with her before when he put his hand on her; she never said a word and sometimes smiled, but on this occasion she was so different and he knew he was up against it if he let her go, that he wouldn't be out of the house before the whole neighborhood would be after him and an officer would be there "before I would know it." [Rep. Tr. pp. 259, 260.]

During the taking of the statement petitioner stated that he was not surprised nor was he shocked when he was arrested by Officer Carlson; that he thought this officer treated him all right [Rep. Tr. p. 242]; that the officer with whom he rode from Pershing Square to the Wilshire

Police station did not mistreat him that he knew of and as far as he knew he was not abused by the officers from the Wilshire Police station to the District Attorney's Office [Rep. Tr. p. 243]; that since his arrest no one has hit, slapped or kicked him, nor to his knowledge has anyone threatened to mistreat him in any way and no one has promised him anything. He was asked, "Have you got any complaint at all the way the officers have treated you?" and answered, "No, nothing at all. Wonderful." [Rep. Tr. p. 244.]

In his defense, under his plea of not guilty as to whether he had the mental capacity to form an intent to kill, petitioner called as a witness Dr. Marcus Crahan in charge of the hospital in the county jail who testified that on or about the 17th day of November, 1949, he examined Fred Stroble. [Rep. Tr. pp. 378, 379]; that Stroble admitted to him that he had been guilty of sexual aggression on several children over a period of years; that Stroble was within the range of the sexual psychopath; that Stroble related to him that he had murdered a girl [Rep. Tr. p. 393]; that Stroble got no sexual thrill from the murder, but did it as a sexual outlet; that the murder was purely a defense mechanism; that several things went on in Stroble's mind subsequent to his sexual playing with the girl. "First, that she seemed distant to him—she was not as friendly as she had been on former occasions and he was afraid that he would tell her mother or that he would be exposed, and he had been warned the day before by his son-in-law that he would have to

leave the house, or he could not stay there any more because he was wanted by the police. When he started playing with the little girl and she screamed that set off this defense mechanism which was in the form of a reflex action in which he choked her to stifle the screams"; that the murder was committed as a result of panic and fear of detection and was purely incidental to his sexual intrusion upon the victim. [Rep. Tr. pp. 394, 305.]

Another physician called by the defense was Dr. Jacob Peter Frostig, who testified that Stroble related to him the details of the killing of the little girl, and said that he was frightened. [Rep. Tr. pp. 476, 485.]

Mr. Carl Palmberg was a defense witness and testified that he is a clinical psychologist [Rep. Tr. p. 529]; that he had a conversation with Stroble pertaining to the killing of the little girl [Rep. Tr. pp. 598, 599]; that Stroble said they played together in the bedroom, that he touched her, placed her on the bed; that she began to object and said, "No, I want to go outside"; that he was surprised, astonished and violently upset when she started to make a move; that he admonished her to be quiet and then she screamed very, very loud; that Stroble related that he had obtained the various instruments, namely, the ice pick, the knife, the axe and the necktie; that he was in a state of complete terror at that time because not only would the police arrest him but he could anticipate any conceivable kind of treatment from the neighbors to be around and who responded to her cries for assistance, etc. [Rep. Tr. pp. 608-611.]

ARGUMENT.

I.

Confession Was Not Obtained by Physical Abuse or Psychological Torture.

Apparently the confession about which complaint is made by petitioner is the one taken at the District Attorney's office and which was placed in evidence over his objections. Previous to making this confession petitioner, when asked by Mr. Miller, the linen service driver who caused petitioner's arrest, if he were guilty of what he was accused mumbled something under his breath which sounded like, "I guess I am." There is no contention and none may earnestly be made that Mr. Miller abused the petitioner or that the kicking of petitioner's feet by Officer Carlson or the exhibition by this officer of his sap stick caused petitioner to make this admission of guilt. It was this admission of guilt which caused the park foreman, who had nothing to do with the arrest or custody of petitioner, to slap petitioner, knocking off his glasses. This seems not to have had any after effects on petitioner because he did not even mention these so-called physical abuses to the homicide officers who arrived there later or to the District Attorney against whom petitioner lodges no complaint of physical abuse. This is all the evidence there is to support petitioner's statement on page 5 of his petition that "he evidenced a reluctance to speak, and he was then threatened, slapped, kicked, and conditioned for future interrogation."

This future interrogation is probably the basis for petitioner's claim of "psychological torture," namely, the fact that he was interrogated in the office of the District Attorney for approximately two hours in the presence of 19

persons consisting of members of the District Attorney's staff, police officers, and stenographers. (Pet. p. 6.) That of itself is feeble evidence of a confession being obtained by "psychological torture." From all that appears in the record the petitioner welcomed arrest and the opportunity to unburden his soul of the horrible deed which he committed on this little girl, and thought that he might as well pay here as in the Hereafter. "Everything what is. Nothing I go back. I want to give myself up anyway, but I was ready for the jump over then I thought I cannot get away from punishment, because I paid the other side. Might as well pay here too. That was my opinion. That is why I came down." [Rep. Tr. p. 245.]

We submit that petitioner confessed not because of any physical abuse or psychological torture inflicted upon him by others, but to relieve his conscience and soul of this dastardly crime. He admitted this murder not only to the District Attorney but later to several doctors (hereinabove set forth) who examined him and who were called by him as witnesses and testified to the same in an effort to prove that petitioner did not have the mental capacity to form an intent to kill.

The Supreme Court of California did not hold that defendant confessed by reason of physical abuse or psychological torture, but stated in effect that, *assuming* the confession was thus obtained, its introduction in evidence would offend the due process clause of the Fourteenth Amendment. (36 A. C. 585, 586.)

II.

Petitioner's Trial Was Not "Trial by Newspaper."

The Supreme Court of California said:

"... At the time of defendant's arrest and at the time of his trial (which began some seven weeks later) there was notorious widespread public excitement, sensationally exploited by newspaper, radio and television, concerning crimes against children and defendant's crime in particular. In these circumstances, defendant urges, it was impossible for him to obtain an unbiased jury, and due process requires a new trial even though there is no showing that any juror was actually influenced by the sensational publicity and the popular hysteria." (36 A. C. 583.)

There is very little in the record relative to the "Trial by Newspaper." Naturally the finding of the body of the little girl in its mangled and mutilated condition was a matter to receive newspaper attention, which caused notorious widespread public excitement. It was by reason of this newspaper publicity that petitioner was apprehended.

At the trial of petitioner we find in the record that on *voir dire* examination of a prospective juror he was asked if he had read or heard anything about the case and answered, "I have"; that he was asked if he had formed anything like a fixed opinion and answered, "None at all."

"The Court: In other words, if you were accepted on this jury you would start out, we will say, from scratch, absolutely impartial?"

Mr. Kalbfuss: That is right.

The Court: You are willing to listen to the evidence on both sides, and to decide the case according

to the evidence as you hear it in the court room and the law of California?

Mr. Kalbfuss: That is right.

The Court: Counsel may inquire." [Rep. Tr. pp. 1108, 1109.]

Counsel for petitioner then questioned Mr. Kalbfuss and counsel was apparently satisfied that petitioner would receive a fair trial regardless of the previous newspaper publicity given to the case because counsel did not pursue the subject further than that brought out by the Court as above set forth. [Rep. Tr. pp. 1108-1115.]

In his argument to the jury counsel for petitioner said:

" . . . I wish to make this commentary with reference to just what has occurred *before the Court took the Bench*. I refer to the televising and the pictures taken of the jury entering the box, *and with counsel*. My own predilection is that I don't like theatricals. I don't like this added publicity in the case; and yet *we conform, we cooperate* with the men, our fellow human beings *in the vocation*, and therefore we accept it as part of what we have to expect in a case that has attracted so much attention, that has been so widely publicized, and concerning which there have been utterances over the radio, in the public press, which have unduly accentuated the importance of this case as if it were set apart from the orderly processes of the Court's day in and day out in numberless other cases; and I make that comment to you, we shall not be influenced in the slightest degree in that calm deliberation, dispassionate discussion, and arriving at a verdict under the institutions under which we live, and concerning which we are proud: the American way of the conduct of a trial." [Rep. Tr. pp. 1115(57), 1115(58).] (Emphasis added.)

From these remarks of counsel for petitioner we gather that in the absence of the judge pictures were taken by the press of the jury entering the box and that this was also televised and counsel participated and cooperated therein; that counsel in view of this added publicity to the case cautioned the jury not to be influenced in the slightest degree by it in arriving at a verdict. We must assume that the jury followed this admonition since none was requested to be given by the Court who from all appearances was not aware of what had taken place during his absence from the court room, at least there is no showing that it was brought to his attention.

After petitioner had been found guilty of murder of the first degree by the jury and was adjudged sane by the Court, petitioner substituted John D. Gray as his attorney in the place and stead of the Public Defender. [Clk. Tr. p. 67; Rep. Tr. p. 1139.] At the request of Mr. Gray the Court granted several continuances before passing sentence in order that Mr. Gray could familiarize himself with the record. [Rep. Tr. pp. 1141, 1144, 1154.] Petitioner then moved for a new trial. [Rep. Tr. p. 1162.] One of the grounds urged was that he was deprived of the presumption of innocence by the premature release by the District Attorney's Office of the details of the confession. In support thereof petitioner offered and the Court admitted as Exhibits AA in one group, namely, a copy of the 10 Star Edition of the Daily News, dated Thursday, November 17, 1949; the Sunrise Edition of the Los Angeles Examiner of Friday, November 18, 1949; the Sunset Edition of the Los Angeles Evening Herald and Express, Thursday, November 17, 1949; and pages 1 and 2 of the Los Angeles Times, Home Edition, Friday, November 18, 1949. [Rep. Tr. p. 1233.]

The trial court stated that to say that petitioner was deprived of the benefit of the presumption of innocence because the newspapers published matters concerning the case is wholly untenable and illogical.

" . . . There is nothing to show those jurors ever saw those papers or ever read those papers. They were fully examined so far as defense counsel desired as to any knowledge or information they might have of the case. They were instructed as to the doctrine of reasonable doubt, and there is one presumption that does apply here and it is presumed the jury followed the law. As a matter of fact, there was no defense offered to the murder charge here whatsoever. The only thing in ~~the~~ nature of a defense which was offered was the legal argument as to whether it was a murder of the first or of the second degree, and the argument upon the hypothesis of first degree murder, as to which of the two penalties should be imposed." [Rep. Tr. pp. 1233, 1234.]

Thus, as the Supreme Court of California said, "There is no showing that any juror was actually influenced by the sensational publicity and the public hysteria." And further, "We can also assume that it was improper to allow the taking of news photographs or televising of scenes in the courtroom; but there is no indication that the jury's verdict was influenced by the taking of the pictures or the televising of courtroom scenes." (36 A. C. 583, 584.)

III

Petitioner Was Not Denied Due Process of the Law Under the Fourteenth Amendment by Not Being Taken Immediately Before a Magistrate.

It appears in the record that Officer Brennan first saw petitioner at approximately 12:30 o'clock on November 17, 1949, at the Wilshire Police station [Rep. Tr. p. 129], at which time petitioner was in custody of Officer Carlson; that petitioner was immediately taken in a car to the District Attorney's Office [Rep. Tr. p. 130]; that petitioner did not request to communicate with any member of his family or with a lawyer, or ask to see or telephone to Attorney John Gray [Rep. Tr. pp. 131, 132]; that Officer Brennan had knowledge at the time they started on the trip to the District Attorney's Office that a complaint charging Stroble with murder had been filed in the Municipal Court on the preceding day and a warrant of arrest had been issued by a judge of the Municipal Court before whom a complaint had been filed [Rep. Tr. pp. 132, 133]; that he did not take Stroble to the Municipal Court before going to the District Attorney's Office and that the Municipal Court is located on the 7th floor and the District Attorney's Office is on the 6th floor in the Hall of Justice, the same building. [Rep. Tr. p. 134.]

The admitted fact that petitioner was taken to the District Attorney's Office instead of being taken immediately before a magistrate did not render his confession involuntary and its introduction in evidence a violation of the due process clause of the Fourteenth Amendment.

The Supreme Court of California held that such procedure was in violation of Section 8 of Article 1 of the State Constitution, which provides that:

“ . . . When a defendant is charged with the commission of a felony, by a written complaint sub-

scribed under oath and on file in the court within the county in which the felony is triable, he shall, without unnecessary delay, be taken before a magistrate of such court."

Also, that it was in violation of Section 825 of the Penal Code, which provides that:

"The defendant must in all cases be taken before the magistrate without unnecessary delay, and, in any event, within two days after his arrest, excluding Sundays and holidays;"

Also, that it was in violation of Section 848 of the Penal Code, which provides that:

"An officer making an arrest, in obedience to a warrant, must proceed with the person arrested as commanded by the warrant, or as provided by law."

Section 814 of the Penal Code prescribes the form of warrant and it commands that the accused be forthwith arrested and brought before the magistrate who issued the warrant or before the nearest or most accessible magistrate in the county. Section 145 of the Penal Code makes it a misdemeanor to wilfully delay taking the arrested person before a magistrate having jurisdiction. (36 A. C. 587, 588.) The Supreme Court of California said that the violation of petitioner's constitutional and statutory rights immediately after his arrest appears not to have affected the outcome of defendant's trial. (36 A. C. 589.)

The Supreme Court of the United States in *Lisenba v. People of the State of California*, 314 U. S. 219, 62 S. Ct. 280, 291, where the same matter was under consideration, said:

"Does the questioning on May 2nd, in and of itself, or in the light of his earlier experience, render

the use of the confessions a violation of due process? If we are so to hold it must be upon the ground that such a practice, irrespective of the result upon the petitioner, so tainted his statements that, without considering other facts disclosed by the evidence, and without giving weight to accredited findings below that his statements were free and voluntary, as a matter of law, they were inadmissible in his trial. This would be to impose upon the state courts a stricter rule than we have enforced in federal trials. There is less reason for such a holding when we reflect that we are dealing with the system of criminal administration of California, a quasi-sovereign; that if federal power is invoked to set aside what California regards as a fair trial it must be plain that a federal right has been invaded."

IV.

District Attorney's Refusal to Permit Counsel to See Petitioner While Confession Was Being Taken Did Not Violate Petitioner's Constitutional Right to Counsel or Due Process of Law.

Attorney John D. Gray was called as a defense witness and testified that he is attorney of record for defendant on another sex offense charge; that on November 17, 1949, he received a telephone call from Mr. Hausman who told him to go to the District Attorney's Office and see what he could do; that he arrived at the District Attorney's office at 1:43 p.m. [Rep. Tr. pp. 420-423]; that he asked the girl at the desk if he could see Mr. Alexander (Deputy District Attorney) and was told that Mr. Alexander was in conference and could not see him [Rep. Tr. p. 425]; that he gave his name to the girl and told her that he was Stroble's attorney; that he also asked for Mr. Henderson and was told that Mr. Henderson was in confer-

ence; that he told the girl that he demanded the right to see Stroble and she told him that he could not see Stroble [Rep. Tr. p. 426]; that on several occasions he asked the girl if they knew he was there and she told him that they did; that he saw Stroble when they brought him out of the office that afternoon and took him to Dr. Crahan's [Rep. Tr. p. 428]; that Stroble was rushed by him and taken to the elevator; that he then saw Mr. Alexander in the corridor and asked him why he had not been allowed to see Stroble; that Mr. Alexander told him that they were in conference and couldn't be interrupted; that Mr. Alexander introduced him to Mr. Barnes, Assistant District Attorney; that he asked Mr. Barnes why he hadn't been allowed to see Stroble [Rep. Tr. p. 429]; that Mr. Barnes told him that they had been in conference and couldn't be interrupted; that he said to Mr. Barnes, "Well, I have a right to see him," and Mr. Barnes said, "No, you don't have any such right"; that at approximately 9:30 o'clock that evening he saw Mr. Stroble in the attorney's room in the county jail [Rep. Tr. p. 430]; that on the night of November 16, 1949, at the Wilshire Police Station, when he was there with Mr. Hausman, he told Mr. Henderson and Mr. Alexander that he represented Mr. Hausman [Rep. Tr. pp. 430, 431]; that he believed it was after Stroble's arrest although it may have been that night that he told Mr. Henderson and Mr. Alexander that he did not represent Stroble on the murder charge and under no circumstances would he represent Stroble on the murder charge [Rep. Tr. pp. 432, 433]; that he remembered making the statement that Mr. Hausman had sent him down there to talk to Stroble and that if Mr. Hausman was satisfied that Stroble had committed this act he would not defend him; that he never appeared as attorney of record in the murder case [Rep. Tr. p. 435]; that he said he

would not defend Mr. Stroble, that he had a civil practice, didn't defend criminal matters ordinarily, other than a few minor violations, but that he would associate an experienced counsel if Mr. Hausman so desired [Rep. Tr. p. 438]; that Mr. Hausman had told him that he had been informed that Stroble had been picked up and taken to the District Attorney's Office and asked him to go there and do what he could [Rep. Tr. p. 439]; that he went to the District Attorney's Office to advise Stroble of his constitutional rights [Rep. Tr. p. 440]; that he remembered Mr. Alexander said to him, "John, you know that you had no intention of defending Stroble and that you told us that the night before and the day Stroble was picked up," and that in reply he said, "Well, Alexander, I probably would have said anything to you just to get in to see Stroble." [Rep. Tr. p. 441.]

Chief Deputy District Attorney S. Ernest Roll testified that in the afternoon of November 17, 1949, at the entrance to the District Attorney's Office, he had a conversation with Mr. Gray in the presence of Mr. Alexander [Rep. Tr. pp. 769, 770]; that Mr. Gray said that he did not represent Fred Stroble, that he represented Mr. Hausman; that the Hausmans had heard that Stroble had confessed and he was there just to find out from Stroble if this was true. [Rep. Tr. p. 771.]

Mr. John Barnes, Assistant District Attorney, testified that in the afternoon of November 17, 1949, Mr. Roll, Mr. Alexander and Mr. Gray came into his office [Rep. Tr. pp. 775, 777]; that Mr. Gray said, "Where is Mr. Stroble?" or, "I want to talk to Mr. Stroble"; that he said, "I don't have Mr. Stroble, he is in the custody of the Police Department. May I ask you, have you been employed to represent Mr. Stroble in this matter?"; that

Mr. Gray said, "No" [Rep. Tr. p. 777]; that he asked Mr. Gray whom he represented and Mr. Gray said Mr. Hausman, the son-in-law; that Mr. Gray said that he just wanted to see Mr. Stroble and ask him whether or not he committed the murder in order to report to Mr. Hausman, because Mr. Hausman had instructed him that if Stroble had committed the murder he (Hausman) wanted absolutely nothing to do with Stroble [Rep. Tr. pp. 779, 780]; that he said to Mr. Gray, "He has completely and voluntarily confessed the crime. I was there. I heard it. He has told all of the details of what he did. Gray, you can take my word for it and so report to your client. Would you like to use my telephone?"; that Mr. Gray said he would and he left Mr. Gray in the office alone; that in about five minutes Mr. Gray came out of the office and thanked him; that the conversation with Mr. Gray was within ten minutes after the conclusion of Stroble's statement, along about 3:30 o'clock in the afternoon [Rep. Tr. p. 780]; that Mr. Gray asked why he hadn't been allowed to see Stroble and said that he had a right to see him and that he told Mr. Gray that he was not the man's lawyer and had no such right. [Rep. Tr. p. 782.]

Officer Tullock testified that on the night of November 16, 1949, in front of Hausman's home, Mr. Gray said that he did not and will not represent Stroble in the murder case; that his client is Hausman; that he just wanted to satisfy himself that Stroble committed the murder. [Rep. Tr. pp. 782, 783.] The same testimony was given by Officer Brennan and it was stipulated that if Mr. Alexander and Mr. Henderson were called as witnesses they would give the same testimony. [Rep. Tr. pp. 783-786.] The same testimony was given by Inspector Donahoe.

[Rep. Tr. pp. 789, 790.] This witness also testified that he saw Mr. Gray in the hallway while Stroble was in the office of the District Attorney [Rep. Tr. pp. 790, 791]; that Mr. Gray asked if Stroble had confessed and he told Mr. Gray that Stroble was making a complete statement which would take probably another 30 minutes or more; that he asked Mr. Gray if he was going to represent Mr. Stroble and Mr. Gray said he was not, but his purpose for being there was merely to hear from Stroble's lips the truth so that he could relay it back to the Hausmans; that he told Mr. Gray that he could believe him because they had not told him any falsehoods previously, that he could go back and tell the Hausmans that Mr. Stroble was making a complete and voluntary confession to the effect that he solely was responsible for the murder of the child [Rep. Tr. p. 792]; that Mr. Gray said he would rather talk to Stroble himself; that he told Mr. Gray that in that case if he would remain there until after the statement was completed and then see Mr. Alexander or Mr. Henderson as to when he would be able to see Stroble [Rep. Tr. p. 793]; that he told Mr. Gray that Stroble was giving a complete confession and said to him, "Why don't you go on home and come back tomorrow and let's do this thing right?"; that Mr. Gray said he was going to remain there until he did get to see Stroble. [Rep. Tr. p. 796.]

The Supreme Court of California said:

"It is also apparent that defendant should have been allowed to see Mr. Gray, who was present at the request of defendant's son-in-law, a 'relative of such prisoner' (Pen. Code, sec. 825). We disregard as a quibble the suggestion of the People that their officers had no duty to let Mr. Gray see defendant

because Gray did not wish to advise or represent defendant but was present because of mere curiosity." (36 A. C. 588.)

Section 825 of the Penal Code provides that any attorney at law entitled to practice in the courts of record of California may at the request of the prisoner or any relative of such prisoner visit the person so arrested and that any officer having charge of the prisoner so arrested who wilfully refuses or neglects to allow such attorney to visit a prisoner is guilty of a misdemeanor.

The Supreme Court of California further said:

" . . . As the situation actually developed, however, it became obvious that defendant did not wish, or was not able to remain silent. After he had consulted with Mr. Gray and with attorneys from the public defender's office defendant continued repeatedly to make detailed confessions. Each of these confessions appears to be an attempt by defendant, to the best of his ability, to recount the entire truth as to the killing including his state of mind at the time. In these circumstances the violation of his constitutional and statutory rights immediately after his arrest appears not to have affected the outcome of defendant's trial." (36 A. C. 589.)

Petitioner cites *Malinski v. New York*, 324 U. S. 401; *Watts v. Indiana*, 338 U. S. 49; *Turner v. Pennsylvania*, 338 U. S. 62, and *cf. McNabb v. United States*, 318 U. S. 332; *Haley v. Ohio*, 332 U. S. 596, and *Upshaw v. United States*, 335 U. S. 410, in support of his statement that the conduct of the officers in not taking petitioner promptly before a magistrate and in denying counsel the right to see him until hours after his arrest violated that fundamental fairness in the proceedings taken against him which he describes as the due process of law. (Pet. p. 18.)

The case of *Malinski v. New York (supra)* is authority that a coerced or compelled confession may not be used to convict a defendant and that the judgment of conviction will be set aside though the evidence apart from the confession might have been sufficient to sustain the jury's verdict. However, it is not authority for the claim that a confession is coerced and involuntary solely because a defendant following his arrest is not promptly taken before a magistrate and/or where counsel has been denied the right to see him until hours after his arrest. Malinski's first confession was held to be coerced and involuntary because of the treatment he had received at the hands of the officers and the prosecutor's statement to the jury that Malinski was not hard to break and knew that the cops were going to break him down.

In *Watts v. State of Indiana, supra* (338 U. S. 49), the defendant was arrested on November 12, 1947, as a suspected perpetrator of an alleged criminal assault. Later that day a woman was found dead in the vicinity of this occurrence under conditions suggesting murder in the course of an attempted criminal assault. Defendant was taken from the county jail to State Police Headquarters where he was questioned by officers in relays from about 11:30 o'clock that night until 2:30 or 3 o'clock the following morning, again from 5:30 o'clock in the afternoon until 3 o'clock the following morning, by a relay of six to eight officers. The interrogation was pursued on the 14th, 15th, 17th and 18th when he finally made an incriminating statement. The statement did not satisfy the prosecutor who had been called in and he took defendant in hand and obtained a more incriminating document. For the first two days defendant was kept in solitary confinement in a cell "aptly called 'the hole.'"

No such circumstances exist in the case at bar. The statement made by petitioner was the expression of free choice, to tell all and thereby unburden his conscience which hurt him after reflecting what he had done to this child and which had far exceeded his criminal acts previously committed upon other children.

In *Turner v. Commonwealth of Pennsylvania, supra* (338 U. S. 62), the defendant was questioned for long hours over a period of days and persistently denied any knowledge of the murder. He was not permitted to see friends or relatives during the entire period of custody and it was not until five days after his arrest that he was brought before a magistrate for preliminary hearing.

That is not the situation in the case at bar. Petitioner was arrested on November 17, 1949 [Rep. Tr. p. 156], and on the following day at the hour of 10 o'clock he was arraigned in the Municipal Court at which time the City Public Defender was appointed to represent him and was given a copy of the statement taken from petitioner. [Rep. Tr. pp. 1079, 1080.] Attorney Gray had seen petitioner the previous evening at approximately 9:30 in the attorney's room in the county jail. [Rep. Tr. p. 430.]

We note in the concurring opinion of Mr. Justice Douglas in *Watts v. State of Indiana, supra* (338 U. S. 49), that he advocates the outlawing of any confession obtained during the period of unlawful detention because, he states, the procedure breeds coerced confessions, that it is the root of the evil, and that it is the procedure without which the inquisition could not flourish in the country.

In other words, the rule applied by the Supreme Court in Federal cases (*McNabb v. United States*, 318 U. S. 332) should be applied to State cases as well. This, in our opinion, would be supplanting criminal administration by the States, quasi-sovereigns, and making it solely a Federal matter. It seems to us that the circumstances of each case under which the confession was made should govern as to its voluntariness and not just the fact that it was given while defendant was being unlawfully detained.

According to the opinion of the Supreme Court of California, attorney Gray should have been allowed to see petitioner while he was being interrogated by the District Attorney. Section 13, Article 1, of the Constitution of California provides that, "In criminal prosecutions, in any court whatever, the party accused shall have the right . . . to appear and defend, in person and with counsel . . ." The Supreme Court of California did not say that this provision of the Constitution was violated, but referred only to Section 825 of the Penal Code.

The Sixth Amendment of the Constitution of the United States provides that, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

In *Carter v. People of the State of Illinois*, 329 U. S. 173, 67 S. Ct. 216, 218, the Supreme Court of the United States, in speaking of the right of counsel, said, "And the need for such assistance may exist at every stage of the prosecution, from arraignment to sentencing," under the due process clause of the Fourteenth Amendment. The

court further said, "Neither the historic conception of Due Process nor the vitality it derives from progressive standards of justice denies a person the right to defend himself or to confess guilt."

Therefore, we have not in the instant case a denial of a constitutional right of counsel. Nor do we have in the proceedings taken against petitioner a denial of that fundamental fairness guaranteed under the due process clause of the Fourteenth Amendment.

In *Snyder v. Commonwealth of Massachusetts*, 291 U. S. 97, 54 S. Ct. 330, 338, it is said:

"The Constitution and statutes and judicial decisions of the commonwealth of Massachusetts are the authentic forms through which the sense of justice of the people of that commonwealth expresses itself in law. We are not to supersede them on the ground that they deny the essentials of a trial because opinions may differ as to their policy or fairness. Not all the precepts of conduct precious to the hearts of many of us are immutable principles of justice; acknowledged *semper ubique et ab omnibus* (*Otis v. Parker*, 187 U. S. 606, 609, 23 S. Ct. 168, 47 L. Ed. 323), whenever the good life is a subject of concern. There is danger that the criminal law will be brought into contempt—that discredit will even touch the great immunities assured by the Fourteenth Amendment—if gossamer possibilities of prejudice to a defendant are to nullify a sentence, pronounced by a court of competent jurisdiction in obedience to local law, and set the guilty free."

V.

Trial Court Did Not Remove Petitioner's Counsel.

Petitioner was represented at the trial by Deputies Public Defender Al Matthews and John J. Hill. After the trial on petitioner's plea of not guilty was concluded and the jury had rendered a verdict of guilty of murder of the first degree and at the commencement of the trial on petitioner's plea of not guilty by reason of insanity, the trial court called the attorneys into his chambers and requested the Public Defender, Mr. Cuff, to be present. The court accused Mr. Matthews of loud talking and of unprofessional conduct in furnishing to certain professors, teachers and lecturers at the University of Southern California copies of the doctors' reports in violation of the admonition of the court, when releasing the reports to counsel that they should be kept secret and confidential. [Supp. Rep. Tr. p. 24.] The trial court said, "This discussion here is merely the reason why I believe that Mr. Cuff should be present in the court room, so that we don't have any irregularities." [Supp. Rep. Tr. p. 33], and "to see that this trial is conducted in a manner in which I believe trials should be conducted, in a calm, dignified manner, in accordance with the law and in accordance with the ethics of the legal profession is what I am interested in." [Supp. Rep. Tr. p. 35.] Mr. Cuff and Mr. Hill, with Mr. Matthews present, then carried on the defense at petitioner's trial on his plea of not guilty by reason of insanity.

The Supreme Court of California, in passing on this matter said:

"Defendant's right to counsel does not include the right to be represented by a particular deputy public defender. (See *People v. Manchetti* (1946),

29 Cal. 2d 452, 458 (175 P. 2d 533).) The record sustains defendant's assertions that Mr. Matthews was required to retire from the active representation of defendant because Mr. Cuff and the trial judge disapproved of certain things he had done in connection with the case; it does not sustain defendant's charge that thereafter he was not properly and adequately represented." (36 A. C. 592.).

We submit that this matter invokes no Federal question.

VI.

Trial Court Did Not Fail to Take Evidence at the Trial of Petitioner's Plea of Not Guilty by Reason of Insanity.

After the jury had rendered a verdict on defendant's plea of not guilty they were ordered to return on the following day at 9:30 a. m. because of the two stages of the trial. [Rep. Tr. p. 995.] At 9:30 a. m., the following day, Mr. Matthews accepted the stipulation that the jury in determining the issue of insanity may consider all the testimony theretofore received on the issue of not guilty with the same force and effect as though it had been reproduced before the jury on the question of insanity. [Rep. Tr. p. 996.] After the defendant waived trial by jury as to this issue Mr. Hill submitted the cause as set forth in said stipulation. It was further stipulated that the reports of all the doctors, both court-appointed and those selected by the defense, may be considered as evidence the same as though the doctors had been sworn and testified in the case. [Rep. Tr. p. 1001.]

Although the reports of the doctors were objectionable as hearsay evidence (see Section 1927, Penal Code), there was no objection to their admission in evidence and consideration by the trial court. In fact it was stipulated that

they could be considered by the court in determining the issue of defendant's sanity. Furthermore, insofar as the issue of sanity was concerned defendant was presumed to be sane. (Penal Code, Sec. 1026.) On the trial of such issue the prosecution may rest its case on the presumption of sanity (*People v. Williams*, 184 Cal. 590, 593), and shift the burden of introducing evidence upon the defendant. (*People v. Hickman*, 204 Cal. 470, 477, 478.) By the prosecution stipulating that all of the doctors' reports may be admitted and considered by the trial court in passing upon the issue of insanity relieved the defendant of this burden and was to defendant's benefit, especially where he had no other relevant evidence to submit on the subject.

Petitioner called as witnesses at the trial under his plea of not guilty Doctor Marcus Crahan [Rep. Tr. p. 378] who testified that petitioner was oriented in all fields and was rational and logical in all matters [Rep. Tr. p. 410]; Doctor Jacob Peter Frostig [Rep. Tr. p. 476] who testified that he thought petitioner had the mental ability to intend to put his hands around the child's throat and squeeze [Rep. Tr. p. 517], that petitioner had the mental ability to have the motive to kill the child [Rep. Tr. p. 518], and that petitioner's intent was to kill her in order to quiet her [Rep. Tr. p. 520]; and Doctor Carl G. G. Palmberg [Rep. Tr. p. 529], who testified that it was his opinion that petitioner "did not have the mental capacity to do that planning, premeditating or deliberating." [Rep. Tr. p. 634.]

Petitioner's statement on page 23 of his Petition that, "Thus the stipulation regarding the evidence introduced on the not guilty plea is of no help to the court in the sanity stage of the trial, no evidence of sanity or insanity having been introduced," is obviously erroneous.

Conclusion.

This concludes our response to the petition for a writ of certiorari. When the record is examined relative to the matters complained of, and the opinion of the Supreme Court of California is considered, we submit that no rights guaranteed by the Fourteenth Amendment of the Constitution of the United States were violated and that the judgment should stand as it is.

Wherefore, we sincerely believe that the writ prayed for herein should be denied.

Respectfully submitted,

EDMUND G. BROWN,

*Attorney General of the State of
California,*

WILLIAM V. O'CONNOR,

Assistant Attorney General,

FRANK W. RICHARDS,

*Deputy Attorney General,
Attorneys for Respondent.*

Service of the within and receipt of a copy
thereof is hereby admitted this.....day of
June, A. D. 1951.
